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**2011 Edition**

# Child Custody Actions in Connecticut

A Guide to Resources in the Law Library

- “**Joint Custody**” means an order awarding legal custody of the minor child to both parents, providing for joint decision-making by the parents and providing that physical custody shall be shared by the parents in such a way as to assure the child of continuing contact with both parents.” CONN. GEN. STAT. [§ 46b-56a\(a\)](#) (2011).
- “**Shared physical custody**” means a situation in which each parent exercises physical care and control of the child for periods substantially in excess of a normal visitation schedule. An equal sharing of physical care and control of the child is not required for a finding of shared physical custody.” CONN. AGENCIES REGS. § 46B-215A-1(22) [Child Support and Arrearage Guidelines](#) (eff. August 1, 2005).
- “**Split custody**” means a situation in which there is more than one child in common and each parent is the custodial parent of at least one of the children.” CONN. AGENCIES REGS. § 46B-215A-1(23) [Child Support and Arrearage Guidelines](#) (eff. August 1, 2005).
- **Temporary custody:** “Commitment of child or youth. Petition for neglected, uncared-for, dependent child or youth. Hearing re temporary custody, order to appear or petition. Review of permanency plan. Cost of care and maintenance of child or youth; reimbursement. Revocation of commitment. Applicability of provisions re placement of child from another state and Interstate Compact on the Placement of Children.” CONN. GEN. STATS. [§ 46b-129](#) (2011). *See* Chapter 4 of volume 1. *Juvenile Law in Connecticut*.
- **Child of the marriage:** “. . . the meaning of that concept, in the context of a marital dissolution case, is limited to a child conceived by both parties, a child adopted by both parties, a child born to the wife and adopted by the husband, a child conceived by the husband and adopted by the wife, and a child born to the wife and conceived through artificial insemination by a donor pursuant to §§ 45a-771 through 45a-779.” [Doe v. Doe](#), 244 Conn. 403, 435 (1998).
- “The child of the marriage and the parent of the child are two sides of the same coin... Thus, it confines the meaning of **parentage** to a child conceived by both parties, or to a child who either had been adopted by both parties or was a natural child of one party who had been adopted by the other.” [Doe v. Doe](#), 244 Conn 403, 439 (1998).
- **LEGISLATIVE HISTORY:** “Our statutes providing for awards of joint custody are modeled after the California statutes on the same subject. See remarks of Representative Robert Farr, 24 H. Proc., Pt. 20, 1981 Sess., pp. 6769-70. General Statutes 46b-56a(a) defines joint custody but does not do so in the same terms as the California statutes. Since our statute was intended to track California's statute, we interpret our definition as including joint legal custody, meaning joint decision making, and joint physical custody, meaning a sharing of continued contact with both parents. Further, joint physical custody is severable from joint legal custody.” [Emerick v. Emerick](#), 5 Conn. App. 649, 656-657, 502 A.2d 933 (1985).
- **Third Party:** “The term ‘third party’ refers to any private individual other than a parent of the child, as distinguished from the state.” [Fish v. Fish](#), 285 Conn. 24, 27, fn 1 (2008).

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## Web sites:

- <http://ctlawhelp.org/self-help-guides/family/child-custody>
- [http://www.law.cornell.edu/topics/child\\_custody.html](http://www.law.cornell.edu/topics/child_custody.html)
- <http://www.nolo.com/legal-encyclopedia/child-custody/>

## Treated Elsewhere:

- [Adoption in Connecticut](#)
- [Child Abuse and Neglect in Connecticut](#)
- [Child Support in Connecticut](#)
- [Grandparents' Rights in Connecticut](#)
- [Parental Kidnapping](#)

**These guides are provided with the understanding that they represent only a beginning to research.**

**View our other pathfinders at  
<http://www.jud.ct.gov/lawlib/selfguides.htm#Pathfinders>**

**This guide links to advance release slip opinions on the Connecticut Judicial Branch website and to case law hosted on Google Scholar.  
The online versions are for informational purposes only.**

# Section 1: Child Custody Actions

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to child custody actions in Connecticut including:

- unmarried parent
- parents living separately

## **SEE ALSO:**

[Best Interest of the Child Standard in Connecticut](#)

## **DEFINITIONS:**

- **U.S. Supreme Court:** “The liberty interest at issue in this case — the interest of parents in the care, custody, and control of their children — is perhaps the oldest of the fundamental liberty interests recognized by this Court.” [Troxel v. Granville](#), 530 U.S. 57, 65, 120 S. Ct. 2054, 147 L.Ed. 49 (2000).
- **“Connecticut courts** likewise have recognized the constitutionally protected right of parents to raise and care for their children . . . . When legislation affects a fundamental constitutional right, it must be strictly scrutinized.” [Fish v. Fish](#), 285 Conn. 24, 41 (2008). (emphasis added).
- **Standing Requirement:** “Where fundamental rights are implicated, such as in the present case, standing serves a function beyond a mere jurisdictional prerequisite. It also ensures that the statutory scheme is narrowly tailored so that a person's personal affairs are not needlessly intruded upon and interrupted by the trauma of litigation.” [Roth v. Weston](#), 259 Conn. 202, 219, 789 A.2d 431 (2002).
- **Third party or nonparent custody:** “We recognize that, in many households, grandparents, as well as people who have no biological relationship with a child, undertake duties of a parental nature and that states have sought to ensure the welfare of children by protecting those relationships.” [Ibid.](#), p. 43
- **Parent-like relationship:** “Proof of the nature of a parent-like relationship between a person seeking visitation and the child would provide the jurisdictional safeguard necessary to prevent families from having to defend against unjustified petitions for visitation. Accordingly, any third party, including a grandparent or a great-grandparent, seeking visitation must allege and establish a parent-like relationship as a jurisdictional threshold in order both to pass constitutional muster and to be consistent with the legislative intent.” [Roth v. Weston](#), 259 Conn. 202, 221-222, 789 A.2d 431 (2002)
- “Where the dispute is between a fit parent and a private third party, however, both parties do not begin on equal footing in respect to rights to ‘care, custody, and control’ of the children. The parent is asserting a fundamental constitutional right. The third party is not. A private third party has no fundamental constitutional right to raise the children of others. Generally, absent a constitutional statute, the non-governmental third party has no rights, constitutional or otherwise, to raise someone else's child.” [McDermott v. Dougherty](#), 385 Md. 320, 353-354, 869 A.2d 751 (2005). Cited in [Fish v. Fish](#), 285 Conn. 24, 45 (2008).
- **Standard of Harm:** “the harm alleged in a third party custody petition arises from the fundamental nature of the parent-child relationship, which may be

emotionally, psychologically or physically damaging to the child. Consequently, in light of the fact that a third party custody petition directly challenges the overall competence of the parent to care for the child, the standard employed to protect the liberty interest of the parent must be more flexible and responsive to the child's welfare than the standard applied in visitation cases, in which the underlying parent-child relationship is not contested." [Ibid.](#), p. 47.

### **Third Party Custody Actions**

- **Under Conn. Statute [§ 46b-56\(a\)](#):** "in cases in which a third party seeks to intervene in a custody proceeding brought pursuant to § 46b-56 (a), the party must prove by a fair preponderance of the evidence facts demonstrating that he or she has a relationship with the child akin to that of a parent, that parental custody clearly would be detrimental to the child and, upon a finding of detriment, that third party custody would be in the child's best interest." [Ibid.](#) p. 89.
- **Under Conn. Statute [§ 46b-57](#):** "In cases in which the trial court considers awarding custody to a third party who has not intervened pursuant to § 46b-57, the court may award custody to the third party provided that the record contains proof of . . . facts by a fair preponderance of the evidence . . . demonstrating that he or she has a relationship with the child akin to that of a parent, that parental custody clearly would be detrimental to the child and, upon a finding of detriment, that third party custody would be in the child's best interest." [Ibid.](#)
- **Under Conn. Gen. Statute [§ 46b-56b](#).** "The rebuttable presumption and the standard of harm articulated in the third party custody statute thus protect parental rights because they preclude the court from awarding custody on the basis of a purely subjective determination of the child's best interests or the judge's personal or lifestyle preferences. As a result, we conclude that the statute is facially constitutional." [Ibid.](#) 46-47.

### **STATUTES:**

CONN. GEN. STATS. (2011)

[Chapter 815j](#). Dissolution of marriage, legal separation and annulment

- [§ 46b-56\(a\)](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
- [§ 46b-56b](#). Presumption re best interest of child to be in custody of parent
- [§ 46b-57](#). Third party intervention re custody of minor children. Preference of child.

### **COURT RULES:**

CONNECTICUT PRACTICE BOOK (2011)

- [Chapter 25 Superior Court – Procedure in Family Matters](#)
  - § 25-3. Action for Custody of Minor Child
  - § 25-5. Automatic Orders Upon Service of Complaint
  - § 25-7. Pleadings in general; Amendments to complaint or application
  - § 25-9. —Answer, Cross Complaint, Claims for Relief by Defendant
  - § 25-24. Motions
  - § 25-26. Modification of Custody, alimony or support
  - § 25-28. Order of Notice
  - § 25-30. Statements to be Filed [Financial Affidavits]

- § 25-34. Procedure for Short Calendar
- § 25-38. Judgment Files
- § 25-57. Affidavit concerning Children
- § 25-59. Closure of courtroom in family matters
- § 25-59A. Sealing files or limiting disclosure of documents in family matters
- § 25-60. Family Division Evaluations and Studies
- § 25-61. Family division
- § 25-62. Appointment of Guardian Ad Litem

**LEGISLATIVE HISTORY:**

- Public Acts 1974, No. 74-169, §12, 17 H.R. Proc., Pt. 6, 1974 Sess., p. 2805 [Conn. Gen. Stat. [§46b-61](#)]  
“...expands the jurisdiction of the superior court involving minor children and further states that the section can be used in controversies not only involving a husband and wife but in controversies involving parents of minor children or children if they are no longer married or were never married.”

**LEGISLATIVE REPORTS:**

- LAWRENCE K. FURBISH, [CHILD CUSTODY IN MARRIAGE DISSOLUTIONS, Connecticut General Assembly, Office of Legislative Research Report No. 99-R-0791](#) (August 5, 1999).
- MARY M. JANICKI, [CHILD CUSTODY, Connecticut General Assembly, Office of Legislative Research Report No. 2011-R-0212](#) (May 3, 2011)

**FORMS:**

[Official Family Forms](#)

- [JD-FM-6](#). Financial Affidavit
- [JD-FM-158](#). Notice of Automatic Orders
- [JD-FM-161](#). Custody / Visitation Application
- [JD-FM-164](#). Affidavit Concerning Children
- [JD-FM-164A](#). Addendum to Affidavit Concerning Children
- [JD-FM-173](#). Motion for Contempt
- [JD-FM-174](#). Motion for Modification
- [JD-FM-176](#). Motion for Orders Before Judgment (Pendente Lite)
- [JD-FM-183](#). Custody/Visitation Agreement

*Unofficial Forms*

- Temporary or Pendente Lite Orders  
MARY ELLEN WYNN & ELLEN B. LUBELL, [HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER](#) 106-116 (1991)
- Exparte Orders  
MARY ELLEN WYNN & ELLEN B. LUBELL, [HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER](#) 145-150 (1991)

**CASES:**

- [Foster v. Foster](#), 84 Conn. App. 311, 320, 853 A.2d 588 (2004). “As the plaintiff has no constitutionally protected right to counsel in a custody or visitation proceeding, we decline to require the court, in every custody or visitation dispute confronted with a pro se litigant, to grant a continuance simply because the request is founded on a parent’s right to raise a child without undue interference. Although we recognize the value of family integrity, we acknowledge also that the state has an interest in the orderly presentation of cases and the ability of the court to manage its docket. We therefore conclude that, balancing all the interests, the court’s refusal to grant a continuance did not result in a constitutional deprivation.”
- “It is well established that the court may require the parties and the child to

undergo a psychiatric or psychological evaluation for the purpose of properly disposing of a family matter, in a modification of custody case, to assist in determining the best interest of the child.” *Foster v. Foster*, 84 Conn. App. 311, 323, 853 A.2d 588 (2004).

- [Knock v. Knock](#), 224 Conn. 776,788, 621 A.2d 267 (1993). “Section 46b-56(b) does not require that the trial court award custody to whomever the child wishes; it requires only that the court take the child’s wishes into consideration.”
- [Ridgeway v. Ridgeway](#), 180 Conn. 533, 541, 429 A.2d 801 (1980). “In this case, the evidence showed that the children were living in a familiar and stable environment with love and attention from their paternal grandparents; that the plaintiff at times had an adverse effect upon the children; and that the plaintiff’s psychological instability was such that it posed a threat to the children’s well-being.”
- [Stevens v. Leone](#), 35 Conn. Supp. 237, 239, 406 A.2d 402 (1979). “It seems obvious ... that it was the intent of the legislature to expand the jurisdiction of the Superior Court regarding custody issues from controversies arising out of a dissolution of marriage to controversies in which a child had been born without benefit of marriage.”
- [Rudolewicz v. Rudolewicz](#), Superior Court, judicial district of Hartford at New Britain, Docket No. 410812 (August 20, 1986), 1 C.S.C.R. 664, 666. *20 factors the court should consider when determining the “best interest of the child”*
- **Note:** see the Law Libraries’ Newslog for the most recent Connecticut Supreme and Appellate Court [family law cases](#).
- *Children Out-of-Wedlock* #20.1– #20.13
  - #20.1 Rights of mother
  - #20.2 Rights of father
- *Child Custody* #20 – #88 Grounds and factors in general
- *Infants* #19
  - #19.2 Matters considered in awarding custody
  - #19.3 Determination of right to custody

#### **WEST KEY NUMBERS:**

#### **ENCYCLOPEDIAS:**

- 24A [AM. JUR. 2d](#) Divorce and Separation (2008).
  - §§ 847-915
    - § 847. Discretion of the court
    - § 848. Rights and duties of custodian in raising child, generally
    - §§ 849-856. Factors in determining custody
    - §§ 857-861. Types of custody
    - §§ 862-867. Jurisdiction
    - §§ 879-881. Procedural aspects
    - §§ 885-890. Custody orders or decree
- 67A [C.J.S.](#) Parent and Child (2002).
  - § 55. Rights as to custody, generally
  - § 58. Rights of custody as between parents
  - § 59. Right of custody as against third persons
  - § 60. Contracts, agreements, or stipulations as to custody, generally
  - § 61. Right of parent not consenting to transfer
  - § 62. Revoking release of right to custody; return of custody
  - §§ 63-93. Considerations affecting custody
  - §§ 94-155. Proceedings to determine custody
- George L. Blum, Annotation, *Religion as Factor in Child Custody Cases*,

- 124 ALR5th 203 (2004).
- Robin Cheryl Miller, Annotation, *Child Custody and Visitation Rights Arising From Same-Sex Relationship*, 80 ALR5th 1 (2000).
- Linda A. Francis, Annotation, *Mental Health of Contesting Parent as Factor in Award of Child Custody*, 53 ALR5th 375 (1997).
- Elizabeth Trainor, Annotation, *Initial Award or Denial of Child Custody to Homosexual or Lesbian Parent*, 62 ALR5th 591 (1998).
- Harriet Dinegar Milks, Annotation, *Smoking as Factor in Child Custody and Visitation Cases*, 36 ALR5th 377 (1996).
- Danny R. Veilleux, Annotation, *Age of Parent as Factor in Awarding Custody*, 34 ALR5th 57 (1995).
- Mary E. Taylor, Annotation, *Parent's Use of Drugs as a Factor in Award of Custody of Children, Visitation Rights, or Termination of Parental Rights*, 20 ALR5th 534 (1994).
- Claudia G. Catalano, Annotation, *Child Custody and Visitation Rights of Person Infected with AIDS*, 86 ALR4th 211 (1991).
- 22 [AM. JUR. TRIALS](#) 347 *Child custody litigation* (1975).
  - §§ 1-8. Introduction
  - §§ 15-26. Fees and costs
  - §§ 38-43. Use of expert witnesses and consultants
  - §§ 44-54. Selecting the remedy
  - §§ 55-57. Parties
  - §§ 58-65. Jurisdiction
  - §§ 66-68. Filing the proceeding
  - §§ 69-80. Initial pleadings
  - §§ 81, 82. Notice and service
  - §§ 83-86. Pretrial motions
  - §§ 87-101. Discovery
  - §§ 102-106. Pretrial conference and settlement
  - §§ 109-132. The trial or final custody hearing
  - §§ 133-137. Final judgment or decree
  - §§ 138-153. Post trial matters
    - §§ 138, 139. Enforcement of local or foreign custody decree
    - §§ 150, 151. Modification of custody decree
    - §§ 152, 153. Appeal

**TEXTS &  
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
  - Chapter 40. Jurisdiction to enter and enforce custody orders
  - Chapter 41. Pendente lite custody and visitation
  - Chapter 42. Child custody and visitation
- BARBARA KAHN STARK, [FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT](#) (2003).
  - Chapter 8. Children
- LAW PRACTICE HANDBOOKS, [FAMILY LAW PRACTICE IN CONNECTICUT](#) (1996).
  - Chapter 10 (1996). *Child Custody and Visitation* (Jeffrey D. Ginzberg)
    - §§ 10.1- 10.14. Jurisdiction
      - § 10.7. Simultaneous proceeding in another State
      - § 10.8. Forum inconvenient
      - § 10.9. Jurisdiction declined by reason of reprehensive conduct
      - § 10.10. Child custody affidavit



§ 10.11. Joinder of additional parties  
§ 10.12. The force and effect of custody decrees  
§ 10.13. Recognition of out of state custody decrees  
§ 10.14. Procedure for handling custody proceedings involving  
out of state witnesses and out of state hearings

- AMERICAN BAR ASSOCIATION, [STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING CHILDREN IN CUSTODY CASES](#), (*approved by the ABA House of Delegates, Aug. 2003*)
- AMERICAN LAW INSTITUTE, [PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS & RECOMMENDATIONS](#)  
Chapter 2 (2002). *The Allocation of Custodial and Decision-making Responsibility for Children*
- 2 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) (2007).  
Chapter 10. *Custody Disputes Between Parents*
- 5 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) (2007).  
Chapter 30. *Rights of Putative Fathers to Custody & Visitation*
- MIMI E. LYSTER, [CHILD CUSTODY: BUILDING PARENTING AGREEMENTS THAT WORK](#) (4th ed., 2003).

**PAMPHLETS:**

- LEGAL ASSISTANCE RESOURCE CENTER OF CONNECTICUT, [CHILD CUSTODY](#) (various).
- [CUSTODY DISPUTES: WHAT TO EXPECT FROM THE FAMILY RELATIONS OFFICE](#). Published by the Legal Assistance Resource Center of Connecticut (2009).

**ARTICLES:**

- Linda D. Elrod, [Raising the Bar for Lawyers Who Represent Children: ABA Standards of Practice for Custody Cases](#), 37 FAM. L. Q. 105 (2003).
- Stephen J. Bahr et al., *Trends in Child Custody Awards: Has the Removal of Maternal Preference Made a Difference?* 28 FAM. L. Q. 247 (1994).

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**Table 1: Statutes Relating to Custody Issues**

Custody Related Issues Conn. Gen. Stats. (2011)	
Paternity matters	<p><a href="#">Chapter 319o</a>. Department of Social Services  § <a href="#">17b-27</a>. Voluntary acknowledgment of paternity program.  <a href="#">Chapter 815y</a>, Paternity Matters, §§<a href="#">46b-160 et seq.</a>  § <a href="#">46b-172</a>. Acknowledgment of paternity and agreement to support; judgment.  Review of acknowledgment of paternity  § <a href="#">46b-172a</a>. Filing of claim for paternity by putative father. Child as party.  Attorney General as party. Hearing. Three-judge court. Rights and responsibilities upon adjudication or acknowledgment of paternity.  Claim for paternity after death of putative father.</p>
Guardianship	<p>Chapter 802h, Part II Guardians of the Person of the Minor, §§ <a href="#">45a-603 et seq.</a>  § <a href="#">45a-606</a>. Father and mother joint guardians.  § <a href="#">45a-607</a>. Temporary custody of minor pending application to probate court for removal of guardian or termination of parental rights.</p>
Annulment, Divorce, Legal Separation	<p><a href="#">Chapter 815j</a> Dissolution of Marriage, Legal Separation and Annulment  § <a href="#">46b-56</a>. Orders re custody, care, education, visitation and support of children.  Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening  § <a href="#">46b-61</a>. Orders re Children where parents live separately. Commencement of proceedings  § <a href="#">46b-64</a>. Orders of court prior to return day of complaint.  § <a href="#">46b-66</a>. Review of agreements; incorporation into decree. Arbitration  § <a href="#">46b-69b</a>. Parenting Education Program. Required.</p>
UCCJEA	<p><a href="#">Chapter 815p</a> Uniform Child Custody Jurisdiction &amp; Enforcement Act  § <a href="#">46b-115a</a>. Definitions  § <a href="#">46b-115m</a>. Modification of custody determination of another state  § <a href="#">46b-115w</a>. Procedure for registering an out-of-state child custody order  §§ <a href="#">46b-115x to 46b-115gg</a>. Enforcement of child custody determination</p>
Support	<ul style="list-style-type: none"> <li>• <a href="#">Chapter 816</a> Support Part II <i>Obligations of Relatives</i>  § <a href="#">46b-215</a>. Relatives obliged to furnish support, when.  § <a href="#">46b-215</a>(b). Attorney General as party to the case when person is receiving public assistance.</li> </ul>

## Table 2: New Factors Court May Consider When Awarding Custody

Effective October 1, 2005, Conn. Stats. § [46b-56\(c\)](#)

“In making or modifying any order as provided in subsections (a) and (b) of this section, the court shall consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of the following factors:

1. The temperament and developmental needs of the child;
2. The capacity and the disposition of the parents to understand and meet the needs of the child;
3. Any relevant and material information obtained from the child, including the informed preferences of the child;
4. The wishes of the child’s parents as to custody;
5. The past and current interaction and relationship of the child with each parent, the child’s siblings and any other person who may significantly affect the best interests of the child;
6. The willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders;
7. Any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents’ dispute;
8. The ability of each parent to be actively involved in the life of the child;
9. The child’s adjustment to his or her home, school and community environments;
10. The length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child’s family home pendent lite in order to alleviate stress in the household;
11. The stability of the child’s existing or proposed residences, or both;
12. The mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child;
13. The child’s cultural background;
14. The effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child;
15. Whether the child or a sibling of the child has been abused or neglected, as defined repectively in section 46b-120;
16. Whether the party satisfactorily complete participation in a parenting education program established pursuant to section 46b-69b.

**Table 3: Connecticut Legislative Histories in the Courts**

<p style="text-align: center;"><b>Connecticut Legislative Histories in the Court</b>  <b>Conn. Gen. Stats. § <a href="#">46b-61</a></b></p>	
<p><u>Greco v. Greco</u>, No. FA01-0448175 (May 30, 2001), 29 CLR 579</p>	<p>In 1974, the General Assembly deleted the language "between a husband and wife or former husband and wife" from the statute thereby removing the limitation that the controversy before the court involve persons who were currently married and who had formerly been married. Public Acts 1974, No. 74-169, § 8. There is no support in the legislative history behind this change for the plaintiffs' claim that the purpose of the amendment was to allow nonparent third parties to initiate a custody action against a parent of the minor child. The changes enacted by Public Act 74-169 were primarily technical in nature. 17 H.R. Proc., Pt. 6, 1974 Sess., p. 2806. One of the few substantive changes made by the act was an amendment to General Statutes § 46b-61. Previously, § 46b-61 allowed any husband and wife living separately to file an action for custody of their minor children. Section 12 of Public Act 74-16 expanded the jurisdiction of the Superior Court to include complaints filed by parents living separately who were no longer married or who had never been married. 17 H.R. Proc., Pt. 6, 1974 Sess., p. 2805. Since parents who had never been married could now file a custody action pursuant to § 46b-61, it appears that the changes made by § 8 of Public Act 74-169 merely conformed § 46b-56 to the changes made by § 12 of the Public Act by deleting the requirement that custody controversies involve parents who were or had been married.</p>
<p><u>Moll v. Gianetti</u>, 8 Conn. App. 50, 56, 510 A.2d 1009 (1986)</p>	<p>A review of the legislative history of General Statutes 46b-61 discloses that in 1974 the phrase "[i]n any case in which any husband and wife" was replaced by "[i]n all cases in which the parents of a minor child." Public Acts, 1974, No. 74-169, 12. The express purpose of this amendment was to expand the court's jurisdiction to "controversies involving parents . . . [who] were never married. This permits the Superior Court to provide for the custody and care and support of minor children." 17 H.R. Proc., Pt. 6, 1974 Sess., p. 2805; see also <i>Grynkewich v. McGinley</i>, 3 Conn. App. 541, 543 n. 2, 490 A.2d 534 (1985); <i>Stevens v. Leone</i>, 35 Conn. Sup. 237, 239, 406 A.2d 402 (1979).</p> <p>[Cont'd]</p>

## Connecticut Legislative Histories in the Court

### Conn. Gen. Stats. § 46b-61

[cont'd]

Stevens v. Leone, 35  
Conn. Sup. 237,  
239-240, 406 A.2d  
402 (1979)

In the 1974 session, the chairman of the judiciary committee introduced before the house the bill which contained several amendments to the original act concerning the dissolution of marriages. In referring to the section which has ultimately become section 46b-61 of the General Statutes the chairman stated the following: "In section 12 which addresses itself to section 19 of the Dissolution of Marriage Act further expands the jurisdiction of the Superior Court involving minor children and further states that the section can be used in controversies not only involving a husband and wife but to controversies involving parents of minor children or children if they are no longer married or were never married. This permits the Superior Court to provide for the custody and care and support of minor children." 17 H.R. Proc., Pt. 6, 1974 Sess., p. 2805.

It seems obvious then from the remarks of the chairman of the house judiciary committee at the time that the amendment in question was introduced that it was the intent of the legislature to expand the jurisdiction of the Superior Court regarding custody issues from controversies arising out of a dissolution of marriage to controversies in which a child had been born without benefit of marriage. The court concludes that in view of the legislative history resulting in the present § 46b-61 of the General Statutes, the father of an illegitimate child need no longer be limited to bringing a petition for a writ of habeas corpus to invoke the jurisdiction of the Superior Court in a question regarding custody. It is clear that it was the intent of the legislature to permit an illegitimate father to institute a cause of action regarding custody under the authority of § 46b-61, as was done in the present case.

**Table 4: Excerpt from Official Legislative History of Conn. Gen. Stats. § 46b-61**

<p style="text-align: center;"><b>From Official Legislative History Conn. Gen. Stats. § 46b-61</b></p>	
<p>17 H.R. Proc., Pt. 6, 1974 Sess., p. 6769</p> <p>House of Representatives</p> <p>Thursday, May 21, 1981</p>	<p><b>SPEAKER ABATE:</b> Will you remark further on the adoption of House Amendment Schedule "A"?</p> <p><b>REP. FARR:</b> (19th) Mr. Speaker.</p> <p><b>SPEAKER ABATE:</b> Rep. Robert Farr.</p> <p><b>REP. FARR:</b> (19th) Mr. Speaker, briefly on behalf of the amendment. First of all I would point out I think that the amendment cures a lot of the defects in the file copy. And even if some individuals feel that the amendment itself is not perfect, this amendment is, I believe, far better than the file copy.</p> <p>It does move more in the direction of the California law. There's been a lot of talk about the fact that we're seeking to have what California has. The file copy would have created a preference towards joint custody. That is not what California does. California has an order of preference but the first preference is joint custody or custody to either party.</p>
<p>17 H.R. Proc., Pt. 6, 1974 Sess., p. 6770</p>	<p>Secondly, California does not create that presumption that joint custody is in the best interest if only one party makes that motion. It only creates the presumption when both parties do, as this file copy would.</p> <p>The only real difference between this and the California type approach I think is that California has more resources devoted to the divorce area to be able to pay for some of the intervention in terms of custody areas, so that peopiaa—more do go to a state conciliation conference paid for by the state. We don't have the resources to do that. So that's one major change.</p> <p>I think the amendment is an improvement over the file copy and I would urge adoption of the amendment.</p>

## Section 2: Third Party Custody Actions

A Guide to Resources in the Law Library

<b><u>SCOPE:</u></b>	Bibliographic resources relating to the right of nonparents to intervene in child custody actions
<b><u>SEE ALSO:</u></b>	<a href="#">Rights of grandparents</a>
<b><u>CURRENCY:</u></b>	<ul style="list-style-type: none"><li>• 2011 Edition</li></ul>
<b><u>DEFINITIONS:</u></b>	<ul style="list-style-type: none"><li>• <b>Custody vs. visitation</b> “third parties cannot initiate custody proceedings, unlike third parties who are permitted to initiate proceedings in visitation cases . . . .” <a href="#">Fish v. Fish</a>, 285 Conn. 24, 72 (2008).</li><li>• <b>Parent-like relationship:</b> “. . . to avoid constitutional infirmity, the standing requirement that a third party allege a parent-like relationship with the child should be applied for all of the reasons described in <i>Roth</i> to third party custody awards and to third parties seeking intervention in existing custody proceedings.” <a href="#">Fish v. Fish</a>, 285 Conn. 24, 44 (2008). (Emphasis added.)</li><li>• <b>Standard of harm:</b> “the statutory presumption in favor of parental custody may be rebutted only in exceptional circumstances and only upon a showing that it would be clearly damaging, injurious or harmful for the child to remain in the parent's custody.” <a href="#">Ibid.</a></li><li>• <b>Burden of proof:</b> “To summarize, in cases in which a third party seeks to intervene in a custody proceeding brought pursuant to § 46b-56 (a), the party must prove by a fair preponderance of the evidence facts demonstrating that he or she has a relationship with the child akin to that of a parent, that parental custody clearly would be detrimental to the child and, upon a finding of detriment, that third party custody would be in the child's best interest. In cases in which the trial court considers awarding custody to a third party who has not intervened pursuant to § 46b-57, the court may award custody to the third party provided that the record contains proof of the foregoing facts by a fair preponderance of the evidence.” <a href="#">Ibid.</a> p. 89</li></ul>
<b><u>STATUTES:</u></b>	<p>CONN. GEN. STAT. (2011)</p> <ul style="list-style-type: none"><li>• § <a href="#">46b-56</a>. Orders re custody, care, education, visitation and support of children</li><li>• § <a href="#">46b-56</a>. Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.</li><li>• § <a href="#">46b-56b</a>. Presumption re best interest of child to be in custody of parent</li><li>• § <a href="#">46b-57</a>. Third party intervention re custody of minor children. Preference of child.</li></ul>
<b><u>LEGISLATIVE HISTORY:</u></b>	<p><b>Legislative History of Conn. Gen. Stats. § <a href="#">46b-56b</a>.</b></p> <ul style="list-style-type: none"><li>• “The legislative history of § 46b-56b also reveals that the General Assembly rejected the more explicit standard of harm required for removal of the parent as guardian, which is similar to the type of harm</li></ul>

that must be demonstrated under the temporary custody and neglect statutes, so that the court may give more weight to the child's welfare in determining whether a petitioner has rebutted the presumption in favor of parental custody.” [Fish v. Fish](#), 285 Conn. 24, 52 (2008).

- “Although the legislative history of § 46b-56b has no bearing on the constitutional issue, it provides useful guidance in determining the legislature's intent regarding the standard of harm that it wished to impose in third party custody disputes.” Footnote 23, [Ibid.](#), p.52 [continues to page 54]

#### **OLR REPORTS:**

- SUSAN PRICE, [GRANDPARENTS’ RIGHTS, Connecticut General Assembly, Office of Legislative Research Report No. 2005-R-0832](#) (Nov. 9, 2005).  
“You asked for an explanation of Connecticut law on grandparents’ custody of, and visitation with, their grandchildren.”
- SAUL SPIGEL, [PROGRAMS THAT HELP GRANDPARENTS RAISING THEIR GRANDCHILDREN, Office of Legislative Research Report No. 2004-R-0786](#) (October 12, 2004).  
“You asked for a description of programs that help grandparents who are raising their grandchildren.”
- SAUL SPIGEL, [GRANDPARENTS’ CUSTODY OF GRANDCHILDREN, Connecticut General Assembly, Office of Legislative Research Report No. 2003-R-0596](#) (Sept. 22, 2003).

#### **COURT RULES**

CONNECTICUT PRACTICE BOOK (2011)

- [Chapter 25. Superior Court - Procedure in Family Matters](#)
  - § 25-3. Action for Custody of Minor Child
  - § 25-4. Action for Visitation of Minor Child
  - § 25-5. Automatic Orders Upon Service of Complaint
  - § 25-23. Motions, Requests, Orders of Notice, and Short Calendar
  - § 25-24. Motions
  - § 25-30. Statements to be Filed
  - § 25-34. Procedure for Short Calendar
  - § 25-57. Affidavit Concerning Children
  - § 25-59. Closure of courtroom in family Matters
  - § 25-59A. Sealing files or limiting disclosure of documents in family matters
  - § 25-62. Appointment of Guardian Ad Litem

#### **FORMS:**

##### [Official Forms](#)

- [JD-CL-12](#). Appearance
- [JD-FM-75](#). Application for Waiver of Fees
- [JD-FM-161](#). Custody / Visitation Application
- [JD-FM-162](#). Order to Attend Hearing and Notice to the Defendant
- [JD-FM-158](#). Notice of Automatic Orders
- [JD-FM-164](#). Affidavit Concerning Children
- [JD-FM-164A](#). Addendum to Affidavit Concerning Children
- [JD-FM-6](#). Financial Affidavit
- [JD-FM-176](#). Motion for Orders Before Judgment (Pendente Lite)
- [JD FM-183](#). Custody/Visitation Agreement

#### **CASES:**

- [Fish v. Fish](#), 285 Conn. 24, 27 (2008). In this postdissolution child custody proceeding, the issue before the court is whether a third party must satisfy the jurisdictional pleading requirements and burden of persuasion articulated in



- Roth v. Weston*, 259 Conn. 202, 234-35, 789 A.2d 431 (2002), when seeking the custody of a minor child over the objection of a fit parent.”
- [Denardo v. Bergamo](#), 272 Conn. 500 (2005). “The dispositive issue in this appeal is whether grandparents, who were granted the right of visitation with respect to a minor child pursuant to General Statute § 46b-59 prior to this court’s decision in *Roth v. Weston*,... must satisfy the jurisdictional and substantive requirements set forth in *Roth* when a custodial parent has moved to modify or terminate the visitation order.” Applying the *Roth* criteria retrospectively, the Connecticut Supreme Court affirmed the trial court’s order terminating the grandparents’ visitation rights.
  - [Clements v. Jones](#), 71 Conn. App. 688, 696, 803 A. 2d 378 (2002) “We conclude in the present case, as the Supreme Court did in *Roth*, that there is an ‘absence of the essential allegations and proof in support thereof, both of the nature of the relationship between the [plaintiff] and the defendant’s minor [child] as well as the harm that the [child] might suffer were visitation denied...’”
  - [Roth v. Weston](#), 259 Conn. 202, 205, 789 A. 2d 431 (2002). “We conclude that the statute is unconstitutional as applied to the extent that the trial court, pursuant to the statute, permitted third party visitation contrary to the desires of a fit parent and in the absence of any allegation and proof by clear and convincing evidence that the children would suffer actual, significant harm if deprived of the visitation.”  
“...interference is justified only when it can be demonstrated that there is a compelling need to protect the child from harm.” (229)
  - [Crockett v. Pastore](#), 259 Conn. 240, 250, 789 A.2d 453 (2002). *Maternal grandmother’s petition for visitation; defendant father has sole custody; defendant father and child’s mother were never married and mother’s parental rights were terminated.* “Because the plaintiff failed to meet the requirements under § 46b-59 that she allege and prove that she has a parent-like relationship with the child and that the trial court’s failure to grant visitation with her would cause the child to suffer serious, real and significant harm, we conclude that the trial court did not have jurisdiction over the plaintiff’s petition for visitation.”
  - [Greene v. Thornton](#), No. FA03 0069920 (Conn. Super. Ct., Putnam, Jan. 13, 2004), 2004 Conn. Super. Lexis 117. “Therefore, in *Roth*, we brought these principles to bear, applying a judicial gloss to § [46b-59](#). We concluded that a trial court is without jurisdiction to consider a petition for visitation pursuant to that statute in the absence of specific, good faith allegations that: (1) the petitioner was someone with whom the child had a parent-like relationship; and (2) the child would suffer real and significant harm if deprived of the visitation. *Id.* Specifically, the degree of harm must be “analogous to the kind of harm contemplated by [General Statutes] §§ [46b-120](#) and [46b-129](#), namely, that the child is ‘neglected, uncared-for or dependent.’*Id.*”
  - [Pivnick v. Lasky](#), 34 Conn. L. Rptr. 426 (Conn. Super., Hartford, Mar. 24, 2003). “The question presented by this motion is whether the standard articulated in *Roth v. Weston*, invalidates the prior orders in this case which have allowed for grandparent visitation... The court concludes that the decision of *Roth v. Weston* does override the prior court orders in this matter granting visitation rights to third parties against the wishes of a fit custodial parent.”
  - [Foster v. Foster](#), 33 Conn. L. Rptr. 24 (Conn. Super., New London, Aug. 19, 2002), 2002 Conn. Super. Lexis 2791, *aff’d in part and rev’d in part by* Foster v. Foster, 84 Conn. App. 311 (2004). “The court concurs ... that the constitutional protection afforded by *Roth v. Weston* to a parent-child

relationship applies equally to custody actions under General Statutes §§ 46b-56 and 46b-57... What the plaintiff fails to point out in the present case is that the underpinning of both *Roth v. Weston* and ... *Troxel v. Granville*, 530 U.S. 57 (2000), was the presumption of parental fitness...”

- *In Re Kristy L. v. Ragaglia*, 47 Conn. Supp. 273, 284, 787 A.2d 679 (2001). “So, even though courts have been more cognizant of the ever changing family unit, [it] is imperative for this court to place strong emphasis on the fact that the parental rights of the petitioner’s have been terminated and to find the grandparents no longer possess a legally protected right and, therefore, they lack standing to bring a habeas corpus action.” “... the grandparents’ rights are derivative of the parent’s rights, and when the parent’s rights are terminated, the grandparents no longer have a legally protected interest.” (286)
- *Castagno v. Wholean*, 239 Conn. 336, 352, 684 A.2d 1181 (1996), *overruled* by *Roth v. Weston*, 259 Conn. 202, 789 A.2d 431 (2002). “... the legislature intended §46b-59 to afford the trial court jurisdiction to entertain a petition for visitation only when the minor child’s family life has been disrupted in a manner analogous to the situations addressed by §§ 46b-56 and 46b-57... Although the death of a parent or the de facto separation of the parents may allow an action, there may be other times when an action is also warranted...”

#### **WEST KEY NUMBERS:**

- CHILD CUSTODY #175. Visitation in general
- CHILD CUSTODY #182. Person entitled in general
- CHILD CUSTODY # 183. Custody of siblings

#### **TEXTS & TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
  - § 42.12. Custody claims by third parties
  - § 42.49. Visitation—With third parties
- 2 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) (2007).
  - Chapter 11. Disputes Between Parents and Third Parties
    - § 11.01. Introduction
    - § 11.02. The constitutional basis of parental rights
    - § 11.03. The parental preference standard
    - § 11.04. Determination of parental fitness: Factors to be considered
    - § 11.05. The best interests standard
      - § 11.05A. Detriment to the Child Standard
      - § 11.05B. Conditions attached to custody order
      - § 11.05C. Effect of adoption
    - § 11.06. Standing
    - § 11.07. Role of expert witness
    - § 11.08. Bibliography
- 2 ANN M. HARALAMBIE, [HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES](#) (2009).
  - Chapter 10 (2009). Third Party Custody and Visitation
- 1 DONALD T. KRAMER, [LEGAL RIGHTS OF CHILDREN](#) (Rev. 2d ed., 2005).
  - § 2:19. Preference of natural parent(s) over others; Generally—preference of natural parent(s) over grandparent(s)
  - § 2:20. Preference of the natural parent(s) over others; Generally—Preference of natural parent(s) over adult siblings or other

relative

§ 3:5. Visitation rights; Generally—Grandparents, generally

§ 3:6. Visitation rights; Generally—Natural grandparents of adopted grandchildren

§ 3:7. Visitation rights; Generally—Siblings and other family members

§ 3:8. Other third parties

#### **ENCYCLOPEDIAS:**

- 24A AM JUR Divorce and Separation (1998).
  - § 943. Third –party custody
- 67A C.J.S. Parent and Child (2002).
  - § 59. Right of custody as against third persons
  - §§ 345-358. Special parental relationships
    - §§ 345-350. Persons in loco parentis
    - §§ 351-356. Stepparents
    - §§ 357-358. Grandparents
- Alice Wright Cain, Annotation, *Right To Credit Against Child Support Arrearages For Time Children Spent In Custody Of Noncustodial Parent Pursuant To Visitation Or Court Order*, 118 ALR5th 385 (2004).
- George L. Blum, Annotation, *Grandparents' Visitation Rights Where Child's Parents are Living*, 71 ALR5th 99 (1999).
- Annotation, *Grandparent Visitation Rights*, 90 ALR3d 222 (1979)
- Carol A. Crocca, Annotation, *Continuity of Residence as Factor in Contest Between Parent and Nonparent for Custody of Child Who has been Residing with Nonparent—Modern Status*, 15 ALR5th 692 (1993).
- *Grandparent Visitation and Custody Awards*, 69 POF3d 281 (2002).
  - I. Background
  - II. Elements of proof
  - III. Proof of grandparent visitation award
  - IV. Proof of grandparent custody award

#### **LAW REVIEWS:**

- “*Family Boundaries: Symposium on Third-Party Rights and Obligations With Respect To Children*,” 40 FAMILY LAW QUARTERLY no.1 (Spring 2006).
  - Joanna L. Grossman, *Family Boundaries: Third-Party Rights And Obligations With Respect To Children* (p.1)
  - Brian Bix, *Philosophy, Morality, and Parental Priority*(p.7)
  - Deborah L. Forman, *Same-Sex Partners, Third Parties, Or Parents? The Changing Legal Landscape And The Struggle For Parental Equality* (p. 23).
  - Ronald K. Henry, *The Innocent Third Party: Victims of Paternity Fraud*. (p. 51).
  - Margaret M. Mahoney, *Stepparents as Third Parties in Relation to Their Stepchildren*. (p. 81).
  - Naomi Cahn, *State Representation of Children's Interests* (p. 109).
  - John DeWitt Gregory, *The Detritus of Troxel* (p. 133).
- John R. Logan, *Connecticut's Visitation Statute After 'Troxel v. Granville,'* CONN. LAWYER (Nov. 2000, at 4).
- Koreen Labrecque, Note, *Grandparent Visitation After Stepparent Adoption*, 6 CONN. PROB. L. J. 61 (1991).
- Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Court's Reluctance to Declare Grandparent Visitation Statutes Unconstitutional* (Troxel v. Granville and its Implications for Families and Practice: A Multidisciplinary Symposium), 41 FAM. CT. REV. 14 (2003).

- Laurence C. Nolan, *Beyond Troxel: the Pragmatic Challenges of Grandparent Visitation Continue*, 50 DRAKE L. REV. 267 (2002).
- Linda Quinton Burr, *Selecting and Questioning Expert Witnesses When Grandparents Want the Kids*, in 2001 FAMILY LAW UPDATE, ch. 6 (2001).
- David G. Savage, *Parents First: Supreme Court Warns Judges to be Cautious When Granting Visitation Rights to Grandparents*, 86 ABA J., August 2000, at 38.
- Beatrice Yorker, et seq., *Custodial Relationships of Grandparents Raising Grandchildren: Results of a Home-based Intervention Study*, 49 Juv. & Fam. Ct. J., no. 2 (Spring 1998), p. 15.
- J.C. Bohl, *Brave New Statutes: Grandparent Visitation Statutes as Unconstitutional Invasions of Family Life and Invalid Exercises of State Power*, 3 Geo. Mason U. Civil Rights L. J. 271 (1993).

**Table 5: Custody Statutes with Case Text**

Section No.	Text of Statute	Requirements
§ <a href="#">46b-56(a)</a>	<p>“In any controversy before the Superior Court as to the custody or care of minor children, and at any time after the return day of any complaint under section 46b-45, the court may make or modify any proper order regarding the custody, care, education, visitation and support of the children if it has jurisdiction under the provisions of chapter 815p. Subject to the provisions of section 46b-56a, the court may assign parental responsibility for raising the child to the parents jointly, or may award custody to either parent or to a third party, according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable. The court may also make any order granting the right of visitation of any child to a third party to the action, including, but not limited to, grandparents.”</p>	<p>“the party must prove by a fair preponderance of the evidence facts demonstrating that he or she has a relationship with the child akin to that of a parent, that parental custody clearly would be detrimental to the child and, upon a finding of detriment, that third party custody would be in the child's best interest.” <a href="#">Fish v. Fish</a>, 285 Conn. 24, 89(2008)</p>
§ <a href="#">46b-57</a>	<p>“In any controversy before the Superior Court as to the custody of minor children, and on any complaint under this chapter or section 46b-1 or 51-348a, if there is any minor child of either or both parties, the court, if it has jurisdiction under the provisions of chapter 815p, may allow any interested third party or parties to intervene upon motion. The court may award full or partial custody, care, education and visitation rights of such child to any such third party upon such conditions and limitations as it deems equitable. Before allowing any such intervention, the court may appoint counsel for the child or children pursuant to the provisions of section 46b-54. In making any order under this section, the court shall be guided by the best interests of the child, giving consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference.”</p>	<p>“In cases in which the trial court considers awarding custody to a third party who has not intervened pursuant to § 46b-57, the court may award custody to the third party provided that the record contains proof of . . . facts by a fair preponderance of the evidence . . . demonstrating that he or she has a relationship with the child akin to that of a parent, that parental custody clearly would be detrimental to the child and, upon a finding of detriment, that third party custody would be in the child's best interest.” <a href="#">Ibid.</a></p>
§ <a href="#">46b-56b</a>	<p>“In any dispute as to the custody of a minor child involving a parent and a nonparent, there shall be a presumption that it is in the best interest of the child to be in the custody of the parent, which presumption may be rebutted by showing that it would be detrimental to the child to permit the parent to have custody.”</p>	<p>“the statute is facially constitutional.” <a href="#">Ibid.</a> 46-47.</p>

**Table 6: Troxel vs. Granville**

<h1 style="text-align: center;">Troxel v. Granville</h1> <h2 style="text-align: center;"><u>530 U.S. 57</u></h2>	
EXCERPTS FROM TEXT OF THE OPINION	
65	<p>“The liberty interest at issue in this case — the interest of parents in the care, custody, and control of their children — is perhaps the oldest of the fundamental liberty interests recognized by this Court.”</p>
68-69	<p>“Accordingly, so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.”</p>
72-73	<p>“Considered together with the Superior Court's reasons for awarding visitation to the Troxels, the combination of these factors demonstrates that the visitation order in this case was an <i>unconstitutional infringement on Granville's fundamental right to make decisions concerning the care, custody, and control of her two daughters</i>. The Washington Superior Court failed to accord the determination of Granville, a fit custodial parent, any material weight. In fact, the Superior Court made only two formal findings in support of its visitation order. First, the Troxels “are part of a large, central, loving family, all located in this area, and the [Troxels] can provide opportunities for the children in the areas of cousins and music.” App. 70a. Second, “[t]he children would be benefitted from spending quality time with the [Troxels], provided that that time is balanced with time with the childrens’ [sic] nuclear family.” Ibid. These slender findings, in combination with the court's announced presumption in favor of grandparent visitation and its failure to accord significant weight to Granville's already having offered meaningful visitation to the Troxels, show that this case involves nothing more than a simple disagreement between the Washington Superior Court and Granville concerning her children's best interests. The Superior Court's announced reason for ordering one week of visitation in the summer demonstrates our conclusion well: ‘I look back on some personal experiences . . . . We always spen[t] as kids a week with one set of grandparents and another set of grandparents, [and] it happened to work out in our family that [it] turned out to be an enjoyable experience. Maybe that can, in this family, if that is how it works out.’ Verbatim Report 220-221. As we have explained, <i>the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a “better” decision could be made. Neither the Washington nonparental visitation statute generally — which places no limits on either the persons who may petition for visitation or the circumstances in which such a petition may be granted — nor the Superior Court in this specific case required anything more. Accordingly, we hold that § 26.10.160(3), as applied in this case, is unconstitutional.</i>” [Emphasis added]</p> <p>[Cont’d]</p>

**Table 7: OLR Report**

Connecticut General Assembly OLR Research Report	
	<p>Sandra Norman-Eady, Senior Attorney, <a href="#">Office of Legislative Research Report No. 2000-R-0644 (June 27, 2000). Grandparent Rights.</a></p> <p>“You wanted a summary of the recent U.S. Supreme Court decision in <i>Troxel v. Granville</i> on grandparents’ rights. You also wanted to know if any bills were introduced during the 2000 legislative session regarding such rights.”</p>

**Table 8: Roth v. Weston**

<h1 style="text-align: center;">Roth v. Weston</h1> <h2 style="text-align: center;">259 Conn. 202, 789 A.2d 431 (2002)</h2>	
pp. 209-210	<p>The dispositive issue on appeal is whether, in light of the United States Supreme Court decision in <i>Troxel</i>, § 46b-59, as interpreted by this court in <i>Castagno v. Wholean</i>, 239 Conn. 336, 339-52, 684 A.2d 1181 (1996), is unconstitutional, either facially or as applied in this case. Specifically, the defendant claims that, despite the judicial gloss we placed upon § 46b-59 in <i>Castagno</i>, the statute nevertheless violates the rights of parents to rear their children under the due process clause of the fourteenth amendment to the federal constitution and article first, § 8, of the Connecticut constitution. He further claims that even if the statute survives his facial attack, it is unconstitutional as applied by the trial court to the extent that it permits third party visitation contrary to the desires of a fit parent. Tied to this challenge is the threshold issue of jurisdiction. Accordingly, we resolve the claims together.</p>
p. 216-217	<p>Building on a long line of cases acknowledging the fundamental right of parents to raise their children as they see fit, <i>Troxel</i> teaches that courts must presume that "fit parents act in the best interests of their children," and that "so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." <i>Id.</i>, 68-69. Moreover, <i>Troxel</i> confirms that among those interests lying at the core of a parent's right to care for his or her own children is the right to control their associations. <i>Id.</i> The essence of parenthood is the companionship of the child and the right to make decisions regarding his or her care, control, education, health, religion and association. <i>Pierce v. Society of Sisters</i>, 268 U.S. 510, 534-35, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); <i>Meyer v. Nebraska</i>, 262 U.S. 390, 399, 43 S.Ct. 625, 67 L.Ed. 1042 (1923) (noting that liberty interest includes rights of parents to establish home, bring up children and control education). Furthermore, <i>Troxel</i> confirms that the family integrity is the core element upon which modern civilization is founded and that the safeguarding of familial bonds is an innate concomitant of the protective status accorded the family as a societal institution. <i>Troxel v. Granville</i>, <i>supra</i>, 65-66.</p>
p. 240	<p>In the absence of the essential allegations and proof in support thereof, both of the nature of the relationship between the plaintiffs and the defendant's minor children as well as the harm that the children would suffer were visitation denied, the trial court did not have jurisdiction over the petition for visitation.</p>



# Section 3: Temporary or Pendente Lite Custody Orders

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to temporary custody orders issued while a custody action is pending.
- DEFINITION:**
- “Each motion for modification of custody, visitation, alimony or child support shall state clearly in the caption of the motion whether it is a pendente lite or a postjudgment motion.” CONN. PRACTICE BOOK § [25-26](#) (2011 ed.).
  - “**PENDENTE LITE** orders, by their very definition, are orders that continue to be in force ‘during the pendency of a suit, action, or litigation.’ Ballentine’s Law Dictionary (3d ed., 1969.)” [Febbrioriello v. Febbrioriello](#), 21 Conn. App. 200, 206, 572 A.2d 1032 (1990).
  - “**Pendente lite** orders necessarily cease to exist once a final judgment in the dispute has been rendered because their purpose is extinguished at that time.” [Connolly v. Connolly](#), 191 Conn. 468, 480, 464 A.2d 837 (1983).
  - **APPEALS:** “We begin our analysis by noting the well established rule that, with certain statutory exceptions, appeals shall be taken only from final judgments. See General Statutes §§ 51-197a and 52-263; see also Practice Book § 61-1. ‘An otherwise interlocutory order is appealable in two circumstances: (1) where the order or action terminates a separate and distinct proceeding, or (2) where the order or action so concludes the rights of the parties that further proceedings cannot affect them.’ [Sweeney v. Sweeney](#), 75 Conn. App. 279, 283, 815 A.2d 287 (2003).
  - “We nonetheless decline to adopt a bright line rule that would preclude appeals from all temporary orders of legal custody, preferring instead to consider such appeals on a case-by-case basis. Accordingly, the case before us presents an issue of first impression that requires our careful review.” [Sweeney v. Sweeney](#), 75 Conn. App. 279, 286, 815 A.2d 287 (2003).
- STATUTES:** CONN. GEN. STAT. (2011)
- § [46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
  - § [46b-64](#). Orders of court prior to return day of complaint
- COURT RULES** [CONNECTICUT PRACTICE BOOK](#) (2011)
- § 25-23. Motions, Requests, Orders of Notice, and Short Calendar
  - § 25-24. Motions
  - § 25-26. Modification of Custody, Alimony or Support
- FORMS:**
- [JD-FM-176](#) Motion for Orders Before Judgment (Pendente Lite)
  - MARY ELLEN WYNN & ELLEN B. LUBELL, [HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER](#) 106-116 (1991).  
Form VI-C-2 “Motion for Custody and Support Pendente Lite” (p. 108)

Form VI-C-4 “Motion for Temporary Joint Custody and Determination of Joint Custodial Rights” (p. 110)

Form VI-C-5 “Motion for Temporary Change of Custody Pending Final Determination of Motion to Modify Custody” (p. 111)

- *For guidance on completing the Pendente Lite form see, BARBARA KAHN STARK, [FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT](#) 125-127 (2d ed., 2003).*

#### CASES:

- [Sweeney v. Sweeney](#), 75 Conn. App. 279, 288, 815 A.2d 287 (2003). “Furthermore, the court's temporary order did not subject the defendant to a permanent deprivation that cannot be remedied by a subsequent order. The defendant is not precluded from expressing his views when the issue of parochial education is raised again prior to the conclusion of the dissolution proceedings. In addition, the temporary order did not give to the plaintiff sole decision-making authority regarding other aspects of the child's education, nor did it prevent the defendant from participating in future educational decisions affecting the child. The order merely resolved the parties' disagreement over a single, isolated issue, namely, whether the child shall attend public or parochial school in the fall of 2002.”
- [Strobel v. Strobel](#), 73 Conn. App. 428, 436, 808 A.2d 698, cert. granted, 262 Conn. 930, 814 A.2d 383 (2002), appeal dismissed, 267 Conn. 901, 838 A.2d 209 (2003). “The ‘label’ of ‘temporary custody’ utilized by the court here does not ensure appealability.”
- [Madigan v. Madigan](#), 224 Conn. 749, 757, 620 A.2d 1276 (1993). “...we conclude that temporary custody orders are immediately appealable because an immediate appeal is the only reasonable method of ensuring that the important rights surrounding the parent-child relationship are adequately protected.”
- [Yontef v. Yontef](#), 185 Conn. 275, 291-292, 440 A.2d 899 (1985). “A trial court rendering a judgment in a disputed custody case should therefore consider entering protective orders sua sponte to ensure an orderly transition that protects the primary interests of the children ...”  
“If an appeal appears likely, the court should enter whatever interim postjudgment orders it deems most appropriate ... taking into consideration the needs of the minor children ... as well as the need of the parent who appeals for a fair opportunity to present his or her case.” (p. 293-294)
- [Hall v. Hall](#), 186 Conn. 118, 123, 439 A.2d 447 (1982). “Although during the pendency of the dissolution action the parties and the child have an interest in uninterrupted custody, the trial court typically awards custody pendente lite without having all the relevant circumstances before it... Until the entry of the final decree the court has discretion to modify custody according to the best interest of the child without first finding a material change of circumstances since the previous award.”
- [Faria v. Faria](#), 38 Conn. Supp. 37, 53, 456 A.2d 1205 (1982) Referencing the “affirmative duty imposed upon the court in Yontef in all custody cases”, the court terminated the automatic stay for appeal provided by Practice Book §3065.

#### TEXTS & TREATISES:

- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).  
Chap. 41 Pendente Lite Custody and Visitation Orders  
§ 41.2. Automatic Orders Affecting Temporary Custody  
§ 41.3. Determining Necessity of Motion for Temporary Custody

- § 41.4. Significance of Temporary Custody Determinations
- § 41.5. Modification and Enforcement of Temporary Orders
- § 41.6. Appealability of Temporary Orders
- § 41.7. Emergency Temporary Orders
- BARBARA KAHN STARK, [FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT](#) ch. 8 (2d ed., 2003).
- LAW PRACTICE HANDBOOKS, [FAMILY LAW PRACTICE IN CONNECTICUT](#) (1996).
  - Chapter 10 (1996). *Child Custody and Visitation* (Jeffrey D. Ginzberg.)
  - §§ 10.15-10.18. Temporary custody and visitation (*Pendente Lite*)
    - § 10.15. Statutory basis
    - § 10.16. When a temporary order should be obtained
    - § 10.17. The significance of a *Pendente Lite* order
    - § 10.18. Modification of *Pendente Lite* order

**ENCYCLOPEDIAS:**

- 24A AM JUR Divorce and Separation (1998).
  - § 943. Third –party custody
- 67A C.J.S. Parent and Child (2002).
  - § 112. Temporary custody
  - § 130. Temporary custody
    - Pendent elite order and custody award distinguished
- Kurtis A. Kemper, Annotation, *Appealability of Interlocutory or Pendente Lite Order for Temporary Child Custody*, 82 ALR5th 389 (2000).

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## Section 4: Joint Custody

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating joint custody and the criteria for granting joint custody awards.
- DEFINITION:**
- **JOINT CUSTODY:** “means an order awarding legal custody of the minor child to both parents, providing for joint decision-making by the parents and providing that physical custody shall be shared by the parents in such a way as to assure the child of continuing contact with both parents.” [CONN. GEN. STAT. § [46b-56a](#)(a) (2011)]
- STATUTES:**
- CONN. GEN. STAT. (2011)
- § [46b-56](#). Superior Court orders re custody and care of minor children in actions for dissolution of marriage, legal separation and annulment...
  - § [46b-56a](#). Joint custody. Definition. Presumption. Conciliation.
- LEGISLATIVE REPORTS:**
- SAUL SPIGEL, [PRESUMPTION FOR JOINT CUSTODY IN DIVORCE, Connecticut General Assembly, Office of Legislative Research Report No. 2000-R-0759](#) (July 26, 2000).
  - LAWRENCE K. FURBISH, [CHILD CUSTODY IN MARRIAGE DISSOLUTIONS, Connecticut General Assembly, Office of Legislative Research Report No. 99-R-0791](#) (August 5, 1999). “You asked for a brief summary of Connecticut’s divorce law concerning child custody.”
- FORMS & CHECKLISTS:**
- MARY ELLEN WYNN & ELLEN B. LUBELL, [HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER](#) 106-116 (1991)  
Form VI-C-4. Motion for Temporary Joint Custody and Determination of Joint Custodial Rights (p. 110).
  - 8A AM. JUR. PLEADING & PRACTICE FORMS *Divorce and Separation* (1996 revision)
    - § 21. Stipulation Regarding Joint Custody of Children
    - § 253. Husband and Wife Seek Joint Custody of children
    - § 254. Husband and wife seek custody joint custody of children—  
Another form
    - § 594. Judgment or decree—Provision—Joint custody
    - § 595. Judgment or decree—Provision—Joint custody—Another form
    - § 926. Petition or application—By joint non-custodial spouse—To  
Terminate joint custody of child
  - 1 ANN M. HARALAMBIE, [HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES](#) (2009).
    - § 4.24. —Drafting joint custody agreements
      - Figure 4-1. Joint custody agreement checklist
      - Figure 4-2. Sample joint custody agreement
- CASES:**
- [Wasson v. Wasson](#), No. FA 98-0165911S (Ct. Super., Apr. 23, 2003), 2003 WL 21037756. “Section 46b-56a (a) of the General Statutes defines ‘joint custody’ as meaning ‘an order . . . providing for joint decision-making by the parents . . .’ There is no definitive appellate guidance on whether an order of

joint custody may, when parents are unable to make a decision jointly, vest final decision-making authority in one party. See, e.g., [Tabackman v. Tabackman](#), 25 Conn. App. 366, 368 (1991) ("We might determine that the award of custody in this case is the functional equivalent of an award of sole custody because the plaintiff has ultimate authority in all decisions regarding the children's welfare. We reject this argument, however, because joint custody is the trial court's own determination of the meaning of its order"), citing *Emerick v. Emerick* 5 Conn. App. 649, 663, fn. 9, 502 A.2d 933 (1985) ("The difference between a sole custodian and a joint legal custodian is that the sole custodian has the ultimate authority to make all decisions regarding a child's welfare, such as education, religious instruction and medical care whereas a joint legal custodian shares the responsibility for those decisions"). Numerous trial courts have entered such orders.

- [Tabackman v. Tabackman](#), 25 Conn. App. 366, 369, 593 A.2d 526 (1991). "...because the [joint custody] award was made without agreement of the parties, pursuant to General Statute § 46b-56a, or after motion by one of the parties, it was improperly granted."
- [Timm v. Timm](#), 195 Conn. 202, 208, 487 A.2d 191 (1985). "The trial court ... could reasonably have concluded ... that there really was no meeting of the minds and thus that a joint custody award was not in the best interests of the children."
- [Emerick v. Emerick](#), 5 Conn. App. 649, 658, 502 A.2d 933 (1985). "The statute [§46b-56a], read as a whole, reflects a legislative belief that joint custody cannot work unless both parties are united in its purpose. Therefore, joint custody cannot be an alternative to a sole custody award where neither party seeks it and where no opportunity is given to the recalcitrant parent to embrace the concept."
- [Wasson v. Wasson](#), Docket No. FA98-0165911S (Stamford Super. Ct., April 23, 2003), 2003 Conn. Super. Lexis 1230. "'The difference between a sole custodian and a joint legal custodian is that the sole custodian has the ultimate authority to make all decisions regarding a child's welfare, such as education, religious instruction and medical care whereas a joint legal custodian shares the responsibility for those decisions.'"
- [Christolini v. Christolini](#), Docket No. FA98-0145598 (Waterbury Super. Ct., April 12, 2000), 2000 Conn. Super. Lexis 1127. "Joint custody requires positive communication between parents; an ability not only to speak but to listen to the other parent and to consider the position of the other parent in terms of the needs of the children."
- [Salvatore v. Dunn](#), 5 Conn. L. Rptr. 759, 7 C.S.C.R. 133 (Hartford Super. Ct. Dec. 20, 1991), 1991 WL 281506, 1991 Conn. Super. Lexis 3154.  
*Joint legal custody awarded to unmarried, minor parents.*

**WEST KEY  
NUMBERS:**

- *Child Custody* #120 –#155
- *Children Out-of-Wedlock* #20.9

**TEXTS &  
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).  
§ 42.7 Joint Custody – Generally  
§ 42.8 Joint Custody - Sharing Physical Access  
§ 42.9 Joint Custody - Parental Agreement Requirements
- BARBARA KAHN STARK, [FRIENDLY DIVORCE GUIDEBOOK FOR CONNECTICUT](#) (2d ed., 2003).  
Chapter 8. Children

Who will make the major decisions regarding the children? Legal custody—Sole or joint? pp. 183-191

- LAW PRACTICE HANDBOOKS, INC., [FAMILY LAW PRACTICE IN CONNECTICUT](#) (1996).
  - Chapter 10. Child custody and visitation
  - § 10.22. Joint custody
- 2 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) (2007).
  - Chapter 13. Joint custody
  - § 13.04. Recognized forms of custody
    - [1] Sole custody
    - [2] Divided custody
    - [3] Split custody
    - [4] Shared parenting (Joint custody)
  - § 13.05. Legislative approaches
  - § 13.06. Criteria to determine when joint custody is appropriate
  - § 13.07. Problem areas for practitioners
  - § 13.09. Drafting joint custody agreements
- 1 ANN M. HARALAMBIE, [HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES](#) (2009).
  - § 4.21 Joint Custody Generally
  - § 4.22 Joint Legal Custody
  - § 4.23 Shared Physical Custody
  - § 4.24 Drafting Joint Custody Agreements
- 24A AM JUR Divorce and Separation (1998).
  - § 940. Joint custody
  - § 941. —Divided or alternate custody
  - § 942. Separating children by awards to different custodians
  - § 943. Third-party custody
- 67A C.J.S. Parent and Child (2002).
  - § 66. Joint or divided
- Vitauts M. Gulbis, Annotation, *Propriety of Awarding Joint Custody of Children*, 17 A.L.R. 4<sup>th</sup> 1013 (1982).

#### **ENCYCLOPEDIAS:**

#### **LAW REVIEWS:**

- Joseph L. Steinberg, *Joint Custody: Is Parental Approval Required? An Analysis of Emerick v. Emerick*, 4 CONN. FAM. L. J. 51 (1986).
- Louis Parley, *Joint Custody: A Lawyers Perspective*, 53 CONN. B. J. 310 (1979).
- James W. Bozzomo, *Joint Legal Custody: a parent's constitutional right in a reorganized family*. 31 HOFSTRA L. REV. 547 (2002).
- William C. Smith, *Dads Want Their Day: Fathers Charge Legal Bias Toward Moms Hamstrings Them as Full-Time Parents*. 89 ABA J., Feb 2003, at 38.
- Gerald Hardcastle, *Joint Custody: A Family Court Judge's Perspective*, 32 Fam. L. Q. 201 (Spring 1998).
- Thomas Wilson Lowe III, *Evaluating Parental Potential for Joint Custody (with Form)*, 36 PRAC. LAW., Mar. 1990, at 71.

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# Section 5: Modification of Child Custody

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the authority, grounds and procedures for modification of court orders relating to custody of minor children.
- DEFINITION:** **Modification:** “means a child custody determination that changes, replaces, supercedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the prior custody determination.” (CONN. GEN. STAT. § [46b-115a](#)(11)(2011).
- STATUTES:** CONN. GEN. STAT. (2011)
- § [46b-55](#). Attorney General as party
  - § [46b-56](#). Superior court orders re custody and care of minor children in actions for dissolution of marriage, legal separation and annulment
  - § [46b-61](#). Orders re children where parents live separately
  - § [46b-71](#). Filing of foreign matrimonial judgment; enforcement in this state  
(b) “...A foreign matrimonial judgment so filed ... is subject to the same procedures for modifying ... as a judgment of a court of this state; provided ... the substantive law of the foreign state shall be controlling.
  - § [46b-115m](#). Modification of custody determination of another state.
  - § [46b-115w](#). Registration of child custody determination.
- COURT RULES** [CONNECTICUT PRACTICE BOOK](#) (2011)
- § 25-26. Modification of Custody, Alimony or Support
  - § 25-30. Statements to be Filed
- FORMS:**
- [JD-FM-174 Motion for Modification](#)
  - 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) 592 (2010).  
§ 44.3. Motion for Modification of Custody/Visitation – Form  
§ 44.9. Motion for Temporary Change of Custody Pending Final Determination of Motion to Modify Custody
  - MARY ELLEN WYNN & ELLEN B. LUBELL, [HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER](#) 106 (1991)  
Form VI-C-5. Motion for Temporary Change of Custody Pending Final Determination of Motion to Modify Custody (p. 111)
- CASES:**
- [Janik v. Janik](#), 61 Conn. App. 175, 763 A.2d 65 (2000), *cert. denied*, 255 Conn. 940 (2001). *Modification of custody from joint legal custody to sole legal custody*  
“We conclude that the evidence was sufficient for the court to find that the defendant did not provide a supportive and stable environment for the child and, therefore, that it was in the best interest of the child for the plaintiff to have sole custody” (p.184).
  - [Kelly v. Kelly](#), 54 Conn. App. 50, 56, 732 A.2d 808 (1999). “Because the establishment of changed circumstances is a condition precedent to a party’s relief, it is pertinent for the trial court to inquire as to what, if any, new circumstances warrants a modification of the existing order.”



- [Borkowski v. Borkowski](#), 228 Conn. 729, 737-738, 638 A.2d 1060 (1994).  
“To obtain a modification, the moving party must demonstrate that circumstances have changed since the last court order such that it would be unjust or inequitable to hold either party to it. ...[I]t is pertinent for the trial court to inquire as to what, if any, new circumstance warrants a modification of the existing order... The power of the trial court to modify the existing order does not, however, include the power to retry issues already decided... Therefore, although the trial court may consider the same criteria used to determine the initial award ‘without limitation’ ... its inquiry is necessarily confined to a comparison between the current conditions and the last court order.”
- [Cookson v. Cookson](#), 201 Conn. 229, 514 A.2d 323 (1986). The standard of proof applicable to modification of custody proceedings is the “fair preponderance of the evidence standard”.
- [Evans v. Santoro](#), 6 Conn. App. 707, 710, 507 A.2d 1007 (1986). “...the burden of proving that a change of custody would be in the child’s best interest rests upon the party seeking the change.”
- [Hall v. Hall](#), 186 Conn. 118,122, 439 A.2d 447 (1982). Modification of a custody order must be “based upon either a material change of circumstances which alters the court’s finding of the best interests of the child ... or a finding that the custody order ... was not based upon the best interests of the child.”
- [Fish v. Fish](#), No. FA 00 0339326 S (Conn. Super. Ct., Middletown, June 3, 2003), 2003 Conn. Super. Lexis 1669. *Quoting both Borkowski and Kelly.*
- [Rudolewicz v. Rudolewicz](#), Superior Court, judicial district of New Haven, Docket No. 410812 (August 20, 1986), 1 C.S.C.R. 664. “... the plaintiff has proved by the preponderance of the evidence that at the time of the entry of the decree of dissolution the court had focused its attention primarily on the termination of the marriage relationship and not on the best interests of the child.”

**WEST KEY  
NUMBERS:**

- *Children Out-of-Wedlock* # 20.10
- *Child Custody* #550 – # 662  
#552-579 Grounds and factors  
#600-662 Proceedings
- *Infants* #19.3(6,7)

**TEXTS &  
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).  
Chapter 44. Modification of custody and visitation orders  
§ 44.2. Procedure for seeking modification  
§ 44.4. Standards for modification  
§ 44.5. Time of events and circumstances to be considered  
§ 44.6. Parties entitled to seek modification  
§ 44.7. Pleading specific facts justifying modification  
§ 44.10. Particular reason for modifying order  
§ 44.22. Automatic modification provisions
- [FAMILY LAW PRACTICE IN CONNECTICUT](#), Law Practice Handbooks, Inc. (1996).  
Chapter 10. Child Custody and Visitation ( Jeffrey D. Ginzberg).  
§§ 10.43-10.47. Modification of custody and visitation orders  
§ 10.43. Modification statute  
§ 10.44. The standards for modification of custody and



- visitation
- § 10.45. Procedure for obtaining a modification
- § 10.46. Reasons for modification of custody and visitation
- § 10.47. Standard of review
- 4 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) 25-1 (2007).
  - Chapter 25. Modification and enforcement of forum state's custody-visitiation directives
    - § 25.02. Modification proceedings: Procedural issues
    - § 25.03. Modification standards
    - § 25.04. Key modification factors
      - [1] Ability to provide stable environment
      - [2] Role of child's preferences
      - [3] Impact of relocations
      - [4] Religious considerations
      - [5] Voluntary custody changes
      - [6] Changes in health
      - [7] Change from sole custody to joint custody
      - [8] Lifestyles
      - [9] The aliening parent
      - [10] Consideration of gender
      - [11] Working and non-working parents
      - [12] Remarriage
      - [13] Child abuse
      - [14] Child age
      - [15] Child not personally cared for by parent
      - [16] Noncustodial parent's decisionmaking rights
- 3 ARNOLD H. RUTKIN, [FAMILY LAW AND PRACTICE](#) (2010).
  - 32. Child custody and visitation
    - § 32.10. Modification
      - [1] Generally
      - [2] Jurisdiction
        - [a] Continuing jurisdiction and jurisdiction to modify
      - [3] Time for modification
      - [4] Procedure
      - [5] Modification standards
      - [6] Reasons for modification

#### **PAMPHLETS:**

- [HOW TO MODIFY CHILD CUSTODY ORDERS](#), Connecticut Legal Aid Network (2010).

#### **ENCYCLOPEDIAS:**

- Jay M. Zitter, Annotation, *Custodial Parent's Relocation as Grounds for Change of Custody*, 70 ALR5th 377 (1999).
- David Carl Minneman, Annotation, *Home State Jurisdiction of Court to Modify Foreign Child Custody Decree Under §§ 3(a)(1) and 14(a)(2) of Uniform Child Custody Jurisdiction Act (UCCJA) and Parental Kidnapping Prevention Act (PKPA)*, 28 U.S.C.A. §§ 1738A(c)(A) and 1738A(f)(1), 72 ALR5th 249 (1999).
- Debra E. Wax, Annotation, D. Wax, *Interference by Custodian of Child with Noncustodial Parent's Visitation Rights as Grounds for Change of Custody*, 28 ALR4th 99 (1984).

#### **ARTICLES:**

- Linda D. Elrod, *When Should Custody be Modified: flexibility versus*

*stability*, 26 FAMILY ADVOCATE, Spring 2004, at 40.

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# Section 6: Habeas Corpus Proceedings in Child Custody Matters

A Guide to Resources in the Law Library

**SCOPE:** Bibliographic resources relating to the applicability of a writ of habeas corpus in child custody matters, form preparation and procedure in habeas corpus custody proceedings.

**DEFINITION:**

- “A habeas corpus petition concerning a minor child’s custody is an equitable proceeding in which the trial court is called upon to decide, in the exercise of its sound discretion, the custodial placement which will be best for the child.  
In order to invoke the aid of a habeas corpus writ to enforce a right to physical custody of a minor, the applicant for the writ must show a prima facie legal right to custody.” [Evans v. Santoro](#), 6 Conn. App. 707, 709, 507 A.2d 1007 (1986).

**STATUTES:**

CONN. GEN. STAT. (2011)

- § [45a-606](#). Father and mother joint guardians
- § [46b-1](#). Family relations matters defined
  - (8). Habeas corpus and other proceedings to determine the custody and visitation of children;
  - (9). Habeas corpus brought by on behalf of any mentally ill person except a person charged with a criminal offense
- § [52-466](#). Application for writ of habeas corpus. Service. Return.
- § [52-467](#). Punishment for refusal to obey writ or accept copy.
- § [52-493](#). Order in the nature of prerogative writs

**COURT RULES**

[CONNECTICUT PRACTICE BOOK](#) (2011)

- § 25-40. Habeas Corpus in Family; The Petition
- § 25-41. —Preliminary Consideration
- § 25-42. —Dismissal
- § 25-43. —The Return
- § 25-44. —Reply to the Return
- § 25-45. —Schedule for filing Pleadings
- § 25-46. —Summary Judgment as to Writ of Habeas Corpus
- § 25-47. —Discovery

**FORMS:**

- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) 577 (2010).
  - § 43.9 “Application for Writ of Habeas Corpus”
- MARY ELLEN WYNN & ELLEN B. LUBELL, [HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER](#) 175 (1991)
  - Form No.X-A-1a. Application for Writ of Habeas Corpus Concerning Custody/Visitation of Minor Child(ren), p. 176.
  - Form No. X-A-1b. Affidavit. p. 178
  - Form No. X-A-1c. Writ of habeas corpus, p. 180
  - Form No. X-A-1d. Certification into court, p. 181
  - Form No. X-A-1e. Petition for return of child, p. 182
- 1A DOUGLAS B. WRIGHT & JOHN H. YEOMANS, [CONNECTICUT LEGAL FORMS](#) (1983).

§ 1101.8. Application for writ of habeas corpus concerning custody of child

- 1 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) (2007).
  - § 6.06. Habeas Corpus
    - [1]—Applicability to custody disputes
    - [2] —Procedure
  - § 6.08. Forms
    - [7] Petition for writ of habeas corpus
    - [8] Return to petition for writ of habeas corpus
- 19 AM. JUR. PLEADING & PRACTICE FORMS *Parent & Child* (1997).
  - § 29. Petition or application—For writ of habeas corpus—By parent—General form
  - § 30. Petition or application—For writ of habeas corpus—By parent against grandparents—For custody of child—After death of custodial parent
  - § 31. Petition or application—For writ of habeas corpus—Child forcibly taken by parent to another state”
  - § 32. Petition or application—For writ of habeas corpus—Divorce decree awarding parent custody void for ambiguity—Change of conditions
  - § 33. Petition or application—For writ of habeas corpus—Parent against former spouse—For custody of adopted child—Prior custody decree
  - § 34. Petition or application—For writ of habeas corpus—For custody of minor child

**CASES:**

- [Lehman v. Lycoming County Children’s Services Agency](#), 458 U.S. 502, 102 S. Ct. 3231 (1982). The Supreme Court held that the federal habeas corpus statute “does not confer jurisdiction on federal courts to consider collateral challenges to state-court judgments involuntarily terminating parental rights.” (102 S. Ct. 3231, 3232 *Syllabus*)
- [Terese B. v. Commissioner of Children & Families](#), 68 Conn. App. 223, 230, 789 A.2d 1114 (2002). “In light of our Supreme Court holdings in *Nye* and *Hunte*, we conclude that in the present case, the plaintiff cannot prevail on her assertion that she, as a foster parent, has a liberty interest under our federal constitution in matters of family life and the integrity of the family unit. Because the plaintiff has failed to demonstrate a specific, personal and legal interest, she has failed to establish the first part of the classical aggrievement test.”
- [In Re Jonathan M.](#), 255 Conn. 208, 223, 764 A.2d 739 (2001). “The primary issue in this appeal is whether the habeas petition may be employed as a means of testing the merits of the termination judgment, and not solely as a means of bringing challenges to custody and visitation orders. Although the petitioner’s parental rights have been terminated by a presumptively valid judgment ... to foreclose, on jurisdictional grounds, his ability to seek custody and assert subsequent challenges to the termination judgment, whether through a petition for a writ of habeas corpus or other means, would require a circular course of reasoning in which we are unprepared to indulge.”
- [In re Kristy L. v. Ragalia](#), 47 Conn. Sup. 273, 282, 1999 WL 33445268 (2001). “The threshold question remains: whether the mother and stepfather of the biological father whose rights have been terminated have standing to

institute a habeas action seeking determination of the son's biological child. The court neither finds any statutory authority for the granting of standing, nor can it find any basis for such a confirmation by case law."

- [Weidenbacher v. Duclos](#), 234 Conn. 51, 74, 661 A.2d 988 (1995). "... we hold that the mere fact that a child was born while the mother was married is not a per se bar that prevents a man other than her husband from establishing standing to bring an action for a writ of habeas corpus for custody of or visitation with a minor child."
- [Evans v. Santoro](#), 6 Conn. App. 707, 507 A.2d 1007 (1986). Mother's application for writ of habeas corpus seeking to have her daughter removed from the custody of child's paternal grandparents; custody awarded to the mother.
- [Baram v. Schwartz](#), 151 Conn. 315, 318, 197 A.2d 334 (1964). "The writ of habeas corpus has long been recognized as a proper means of determining the right to the custody of a minor child, and the welfare of the child is the paramount consideration, whether the controversy is between the parents or between a parent and a stranger."
- [Nichols v. Giles](#), 2 Root 461 (1796). Habeas corpus motion brought by father to have his child removed from the custody of child's mother and grandfather; petition denied.
- [Axelrod v. Avery](#), 13 Conn. L. Rptr. 124 (New London Super. Ct. Dec. 1, 1994), 1994 WL 684736, 1994 Conn. Super. Lexis 3058. Grandparents found to "have standing to bring this petition for a writ of habeas corpus".

**WEST KEY  
NUMBERS:**

- *Habeas Corpus* #532 (1,2)

**TEXTS &  
TREATISES:**

- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).  
Chapter 43. Enforcement of custody and visitation orders  
§ 43.8. Habeas corpus proceedings  
§ 43.9. Application for writ of habeas corpus—Form
- 1 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) (2007).  
§ 6.06. Habeas corpus  
[1]—Applicability to custody dispute  
[2]—Procedure

**ENCYCLOPEDIAS:**

- 39 AM. JUR. 2D Habeas Corpus (1999)  
§§ 78-82. Infants  
§ 78. Generally  
§ 79. Enforcement of existing decree  
§ 80. Adoptive children  
§ 81. Juvenile offenders  
§ 82. Termination of parental rights
- 39 C.J.S. Habeas Corpus (2003).  
§§ 214 - 218. Infants. In general  
§§ 219 - 221. Considerations affecting custody  
§§ 222 - 225. Judgment or order awarding custody  
§§ 226 - 228. Conclusiveness and effect of judgments or orders in other actions or proceedings
- G. Lewter, Annotation, *Court's Power in Habeas Corpus Proceedings Relating to Custody of Child to Adjudicate Questions as to Child's Support*,

- 17 ALR3d 764 (1968).
- J. F. Riley, Annotation, *Child Custody Provisions of Divorce or Separation Decree as Subject to Modification on Habeas Corpus*, 4 ALR3d 1277 (1965).
- K. A. Kemper Annotation, *Availability of Federal Habeas Corpus Relief, Under 28 USCS 2241 and 2254, in Child Custody Cases*, 49 ALR Fed. 674 (1980).
- D. C. Smith, *Cause of Action Against Noncustodial Parent for Interference with Custody Rights to Child*, 5 C.O.A. 799 (1984).

**LAW REVIEWS:**

- Paul J. Buser, *Habeas Corpus Litigation in Child Custody Matters: An Historical Mine Field*, 2 JOURNAL OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS, Winter 1993, at 1. (available at the Norwich Law Library)

**COMPILER:**

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\* Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian.

# Section 7: Writ of Ne Exeat in Child Custody Actions

A Guide to Resources in the Law Library

**SCOPE:** Bibliographic resources relating to the the writ of ne exeat especially in child custody cases in Connecticut.

**DEFINITION:**

- “In essence, a writ of ne exeat is an order directed to the sheriff, commanding him to commit a party to custody until he gives security in the amount set by the court to guarantee his appearance in court... The writ of ne exeat is executed in all respects like an ordinary capias, and the bond is taken in the same way. The defendant, if arrested under the writ, may give bond at any time and be discharged. [Beveridge v. Beveridge](#), 7 Conn. App. 11, 16, 507 A.2d 502 (1986).
- “The superior court for any judicial district, and, when such court is not in session, any judge thereof, may grant and enforce writs of ne exeat, according to the course of the common law.” CONN. GEN. STATS. § [52-489](#) (2011).
- **Service:** “All notices of rules and writs issued under the provisions of this chapter shall be directed to a proper officer and served by leaving a true and attested copy with the defendant at such time as the court or judge directs; and such court or judge may prescribe a reasonable time for the appearance of the parties.” CONN. GEN. STATS. § [52-494](#) (2011).

**STATUTES:** CONN. GEN. STAT. (2011).

[Chapter 870](#). Judicial Branch

- § [51-15](#). Rules of procedure in certain civil actions

[Chapter 898](#). Pleading

- § [52-122](#). Procedure in certain actions not changed

[Chapter 918](#). Mandamus, Ne Exeat, Prohibition and Quo Warranto

- § [52-489](#). Issue of writ of ne exeat
- § [52-493](#). Order in the nature of prerogative writs
- § [52-494](#). Notice of rules and writs

**FORMS:**

- MARY ELLEN WYNN & ELLEN B. LUBELL, [HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER](#) 184-187 (1991).
  - Form no. X-A-2a. Application for writ of ne exeat
  - Form no. X-A-2b. Writ of ne exeat
  - Form no. X-A-2c. Petitioner’s Affidavit submitted in support of application for writ of ne exeat
  - Form no. X-A-2d. Plaintiff’s/Defendant’s bond
- 2 CONNECTICUT PRACTICE BOOK (1978).
  - [Form 604.28 Writ of Ne Exeat](#)
- 18A AMJUR PL. & PRACT. FORMS *Ne Exeat*
  - § 7. Petition or application—For writ of ne exeat—General Form
  - § 9. Motion— for writ of ne exeat
  - § 10. Affidavit —In support of application for writ of ne exeat
  - § 11. Affidavit —In support of application for writ of ne exeat—Another form
  - § 12. Bond—To obtain writ of ne exeat

- § 17. Order—Granting writ of ne exeat
- § 18. Writ of ne exeat
- § 20. Return of ne exeat—By sheriff—Reciting arrest and giving of security
- § 21. Return of ne exeat—By sheriff—Reciting arrest and imprisonment

#### **CHECKLISTS:**

- 18A AMJUR PL. & PRACT. FORMS *Ne Exeat* (1997).  
§ 6. Checklist—Matters that should be alleged in petition, application, or motion for a writ of ne exeat

#### **CASES:**

- Hauge v. Mapley, No. FA01-01871 34 S (Conn. Super. Ct., Stamford J.D., Jul. 17, 2003), 2003 WL 21805487. “The court finds that the father has the assets and funds to pay the arrearage. The court has signed a Writ of Ne Exeat that prohibits the father from leaving the state until he has paid his current support arrearage and posts a performance bond for the payment of future support.”
- Rhode Island Hospital Trust Nat. Bank v. Trust, 25 Conn. App. 28, 31, 592 A.2d 417 (1991). “There are other procedures in our law that afford a party a remedy prior to the rendering of judgment (e.g., writ of Ne Exeat, temporary mandamus, and appointment of receiver). Like temporary injunctions, however, their temporal relation to the judgment does not qualify them for immediate appeal ability under the PJR appeal statute.”
- Beveridge v. Beveridge, 7 Conn. App. 11, 507 A.2d 502 (1986).
- Freeman v. Freeman, 17 Conn. Supp. 125 (1950).
- Lyon v. Lyon, 21 Conn. 199 (1851). “The counsel for the plaintiff then moved the court to assign a time for the defendant to appear, and shew cause why such process should not issue. The court assigned a day about a fortnight thereafter. Before the day arrived, however, the plaintiff’s counsel, fearing that the defendant would leave the state, and thus evade process, drew up an application to the court, stating, that the defendant had, notwithstanding the decision of this court, refused to pay the 5,000 dollars alimony, and had spoken with contempt of the court, and its order; had expressed a determination to disobey it; and had used language importing a purpose to go beyond the jurisdiction ; to which statement the plaintiff made affidavit. This being presented to the court, the plaintiff prayed, that a writ of *ne exeat* should be issued forthwith; claiming, that the defendant might, and probably would, if he knew of the application, immediately place himself beyond the reach of process.”

#### **DIGESTS:**

- WEST’S KEY NUMBER: *Ne Exeat*
  - # 1. Nature and purpose of remedy
  - # 2. Constitutional and statutory provisions
  - # 3. Grounds
  - # 4. Jurisdiction to issue
  - # 5. Proceedings to procure
  - # 6. \_\_\_\_\_ In general
  - # 7. \_\_\_\_\_ Affidavits
  - # 8. \_\_\_\_\_ Bond
  - # 9. Issuance, form and requisities
  - # 10. Service, and custody of prisoner
  - # 11. Equitable bail
  - # 12. Vacating or discharge
  - # 13. Return



# 14. Liabilities on bonds

# 15. Wrongful arrest or restraint

- DIGEST OF DECISIONS CONNECTICUT: *Ne Exeat*

**TEXTS &  
TREATISES:**

- MARY ELLEN WYNN & ELLEN B. LUBELL, [HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER](#) (1991).  
Chapter X. Extraordinary relief  
A. Extraordinary relief: Notes & comments
- 3 KAYE, EFFRON & KAYE, [CONNECTICUT PRACTICE BOOK ANNOTATED](#) (2004).  
Authors' comments following Form 604.28

**ENCYCLOPEDIAS:**

- 57 AM. JUR. 2D *Ne Exeat* (2001).  
I. In general  
II. Availability  
III. Proceedings for issuance and execution of writ  
IV. Bond or undertaking of defendant  
V. Discharge of writ
- 65 C.J.S. *Ne Exeat* (2000).  
I. Nature and availability of the writ  
II. Issuance  
III. Service and enforcement  
IV. Discharge
- Debra T. Landis, Annotation, *Civil Liability Of Attorney For Abuse Of Process*, 97 ALR3d 688 (1980).
- Milton Roberts, Annotation, *Principal's Liability For Punitive Damages Because Of False Arrest Or Imprisonment, Or Malicious Prosecution, By Agent Or Employee*, 93 ALR3d 826 (1979).

**COMPILER:**

- George Booth, Connecticut Judicial Branch Law Library at New Britain, 20 Franklin Square, New Britain, CT 06051. (860) 515-5110. [Email](#)

\* Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian.

**Table 9: History of the Writ of Ne Exeat**

History of the Writ of Ne Exeat
<p>“In order to assist in understanding the implications of the issuance of a writ of ne exeat and of the obligations of sureties on a bond issued pursuant thereto, we look to the history of this ancient writ. Antedating this writ, in early common law, there existed a writ de securitatem inveniendi which was utilized to prevent members of the clergy in England from departing the realm to visit the Papal See. <i>National Automobile &amp; Casualty Ins. Co. v. Queck</i>, 1 Ariz. App. 595, 599, 405 P.2d 905 (1965). Thus, it was limited to restricting the movement only of ecclesiastics. Between the twelfth and fourteenth centuries, the writ evolved into a high prerogative writ, available to and utilized by the king to prevent subjects and foreigners, alike, from leaving the kingdom, which became known as a writ of ne exeat regno. It was predicated on the duty of the subject to defend the king and his realm and was primarily used for political purposes or to secure the safety of the state and the benefit of the realm. <i>Id.</i> How this royal prerogative writ came to private use is uncertain but between the sixteenth and seventeenth centuries the practice had developed of using a writ of ne exeat to enforce a private right. <i>Id.</i> Such use of the writ continues to the present day. The writ came to this country with the body of English common law that we adopted as our own. Some state courts base their authority to issue the writ on their inherent power to apply measures available at common law. Other states have provided for the writ by statute. In many states the writ has been abolished by statute. See 57 Am.Jur. 2d, Ne Exeat 1 et seq.; 65 C.J.S., Ne Exeat 1 et seq.” <a href="#">Beveridge v. Beveridge</a>, 7 Conn. App. 11, 15-16, 507 A.2d 502 (1986)</p>

## Figure 1: Writ of Ne Exeat

### Writ of Ne Exeat

To the Superior Court in and for the judicial district of \_\_\_\_\_  
at \_\_\_\_\_ now in session:  
(or if not in session)

To the Hon. \_\_\_\_\_, a Judge of the Superior Court,

The application of (name and residence) respectfully represents:

1. On (date) she obtained a decree for the dissolution of her marriage to (name and residence), the defendant herein, in the (name and location of court).
2. The decree ordered the defendant to pay the plaintiff \$ \_\_\_\_\_ lump sum alimony.
3. This alimony has not been paid.
4. The defendant has declared that he will never pay a cent of the alimony, and has threatened to leave the state of Connecticut permanently.
5. The defendant has no known visible property which can be attached or levied upon, but has abundant means for the payment of the alimony concealed in his possession or control.
6. The plaintiff is making a motion in the court where the decree was entered requesting that the defendant be found in contempt for failure to pay the alimony, and the plaintiff believes the defendant will leave this state before a hearing can be held on the motion.
7. The plaintiff annexes hereto a bond with surety that she pay all proper costs and damages sustained by the defendant if she shall be found wrongfully to have sued out the writ applied for.

The plaintiff asks that a writ of ne exeat may forthwith be issued to prevent the defendant from leaving this state until he has paid the alimony.

Dated at (place and date)

Name of Plaintiff

By \_\_\_\_\_

Attorney

Personally appeared (name of plaintiff)  
who made oath to the truth of the  
foregoing application before me on  
(date)

\_\_\_\_\_  
(Title of Authority Taking Oath)

#### PLAINTIFF'S BOND

Know All Men by These Presents:

That we, (name and residence) as principal and (name and residence), as surety are holden and firmly bound, jointly and severally unto (name and residence of defendant), hereinafter referred to as the defendant, in the penal sum of \$ \_\_\_\_\_, to which payment and truly to be made we hereby bind ourselves, our heirs, executors, and administrators, firmly by these presents.

The condition of this obligation is such that, whereas the principal has made a motion to the superior court in and for the judicial district of \_\_\_\_\_, that the defendant be held in contempt for failure to pay certain alimony found due from the defendant to the principal by a judgment of the court and whereas the principal has made application to the superior court in and for the judicial district of \_\_\_\_\_ sitting

at \_\_\_\_\_ (or to the Hon. \_\_\_\_\_ a judge of the superior court), that a writ of ne exeat should issue against the defendant, now therefore, if the writ shall issue, and the principal shall fail to prosecute the motion to effect or if she shall have wrongfully sued out the writ, she shall pay to the defendant all proper costs and damages he may have suffered by reason thereof, this bond shall be void, but otherwise to remain in full force and effect.

Dated at *(place and date)*

## WRIT

To Any Proper Officer:

Whereas the foregoing application of *(name of plaintiff)* duly verified has been presented to  
the superior court for the judicial district of at

or

the undersigned, a judge of the superior court

And whereas, it is found that reasonable cause exists for granting the prayer of the application.

These are, therefore, by authority of the state of Connecticut, to command you to leave a true and attested copy of the application and of this order with *(name and residence)*, and to require him to give a bond, with sufficient surety, in the penal sum of \$ \_\_\_\_\_, payable to the sheriff of the county of or his successors in office, conditioned that he shall not depart from this state, without permission of the court pending the final decision of the motion referred to in the application; and if he shall neglect or refuse to give such bond, upon your demand, you are directed to arrest his body, and commit him to the care of the commissioner of correction or his agent at a community correctional center, and the commissioner is hereby commanded to receive and safely keep him, until he give such bond, or be discharged according to law; and you are further directed to deliver, in such case, to the commissioner or his agent a true and attested copy of this writ, with your doings thereon endorsed.

Hereof fail not, but make due service and return.

Dated at *(place and date)*

By order of the Court,

\_\_\_\_\_  
Assistant Clerk

A Judge of the Superior Court

## DEFENDANT'S BOND

Know All Men by These Presents:

That we, *(name and residence)* as principal, and *(name and residence)* as surety, are held and firmly bound unto *(name)*, sheriff of \_\_\_\_\_ county or his successors in office, in the penal sum of \$ \_\_\_\_\_, for which payment well and truly to be made we hereby bind ourselves, our heirs, executors and administrators firmly by these presents.

The condition of this bond is such that, whereas there has been duly served upon *(name)* a writ of ne exeat, issued by the superior court for the judicial district of \_\_\_\_\_ at \_\_\_\_\_ (or the Hon. \_\_\_\_\_, a judge of the superior court), on the application of *(name)* enjoining the principal from leaving this state without the permission of the court pending the decision of a certain motion made by *(name)*, that the principal be held in contempt of court for failing to pay certain alimony claimed by her, now therefore, if the principal shall not leave this state without the permission of the court, pending the final determination of the motion, this obligation shall be void, otherwise to remain in full force and effect.

Dated at *(place and date)*

L.S.

# Section 8: Out of State Child Custody Orders

A Guide to Resources in the Law Library

## SCOPE:

Bibliographic resources relating to registration, modification and enforcement of out of state child custody determinations pursuant to the “Uniform Child Custody Jurisdiction and Enforcement Act”.

## DEFINITIONS:

- “The purposes of the UCCCJEA are to avoid jurisdictional competition and conflict with courts of other states in matters of child custody; promote cooperation with the courts of other states; discourage continuing controversies over child custody; deter abductions; avoid re-litigation of custody decisions; and to facilitate the enforcement of custody decrees of other states.” *Radlo v. Radlo*, No. FA920044260 (Conn. Super. CT, Putnam, Dec. 2, 2003), 36 Conn. L. Rptr. 136, 2003 Conn. Super. Lexis 3309.
- “**Child custody determination** means a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.” (CONN. GEN. STAT. § [46b-115a\(3\)](#))
- “**Child custody proceeding** means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for dissolution of marriage, divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under sections 22 to 34, inclusive, of this act.” (CONN. GEN. STAT. § [46b-115a\(4\)](#))
- “**Commencement** means the filing of the first pleading in a proceeding.” (CONN. GEN. STAT. § [46b-115a\(5\)](#))
- “**Home state** means the state in which a child lived with a parent or person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months old, the term means the state in which the child lived from birth with any such parent or person acting as a parent...” (CONN. GEN. STAT. § [46b-115a\(7\)](#))
- “**Initial determination** means the first child custody determination concerning a particular child. (CONN. GEN. STAT. § [46b-115a\(8\)](#))
- “**Modification** means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the prior custody determination.” (CONN. GEN. STAT. § [46b-115a\(11\)](#))
- “**Physical custody** means the physical care and supervision of a child.” (CONN. GEN. STAT. § [46b-115a\(14\)](#))
- “As used in sections 46b-115u to 46b-115gg of this act, **petitioner** means a person who seeks enforcement of a child custody determination, and **respondent** means a person against whom a proceeding has been commenced for enforcement of a child custody determination.” (CONN. GEN. STAT. § [46b-115u](#))

## **STATUTES:**

CONN. GEN. STAT. (2011)

- [Chapter 815p](#). Uniform Child Custody Jurisdiction and Enforcement Act.
  - § [46b-115m](#). Modification of a child custody determination of another state.
  - § [46b-115n](#). Temporary emergency jurisdiction.
  - § [46b-115p](#). Simultaneous proceedings.
  - § [46b-115s](#). Information required by the court.
  - § [46b-115w](#). Registration of child custody determination.
  - §§ [46b-115u—46b-115gg](#). *Procedure for enforcement of out of state child custody orders*
  - §§ [46b-115hh—46b-115jj](#). Foreign child custody

## **INTERNATIONAL CONVENTION:**

- The Hague Convention on the Civil Aspects of International Child Abduction, 1980, U.S., 1988, 51 Fed. Reg. 10494 (Mar. 26, 1986), Available online at <http://www.hcch.net/upload/conventions/txt28en.pdf>

“The objects of the present convention are—

  - a. to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
  - b. to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting State.

## **CASES:**

- [Radlo v. Radlo](#), No. FA920044260 (Conn. Super. CT, Putnam, Dec. 2, 2003), 36 Conn. L. Rptr. 136, 2003 Conn. Super. Lexis 3309. “The purposes of the UCCJEA are to avoid jurisdictional competition and conflict with courts of other states in matters of child custody; promote cooperation with the courts of other states; discourage continuing controversies over child custody; deter abductions; avoid re-litigation of custody decisions; and to facilitate the enforcement of custody decrees of other states.”
- [Gilman v. Gilman](#), Docket No. 0121957S (Norwich Super. CT, May 22, 2001), 2001 WL 688610, 2001 Conn. Super. Lexis 1453. “The UCCJEA alters the analysis of the initial determination of child custody. Specifically, the new act requires that the ‘home state’ determination be made as a condition precedent to an examination as to whether the child and parent have significant connections with this state. The new act also eliminates that analysis on the basis of “the best interest of the child.”

## **WEST KEY NUMBERS:**

- *Child Custody* # 700-789 Interstate issues
- *Child Custody* # 800-830 International issues

## **ENCYCLOPEDIAS:**

- 24A AM JUR 2D Divorce and Separation (1998).
  - § 951. Interstate custody disputes, in general
  - § 952. Personal jurisdiction
  - §§ 953-959. Subject-matter jurisdiction
- 67A C.J.S. Parent and Child (2002).
  - § 103. Uniform Child Custody Jurisdiction and Enforcement Act
- David Carl Minneman, Annotation, *Construction and Operation of Uniform Child Custody Jurisdiction and Enforcement Act*, 100 ALR5th 1 (2002).
- David Carl Minneman, Annotation, *Home State Jurisdiction of Court to Modify Foreign Child Custody Decree Under §§ 3(a)(1) and 14(a)(2) of Uniform Child Custody Jurisdiction Act (UCCJA) and Parental Kidnapping*

*Prevention Act (PKPA)*, 28 U.S.C.A. §§ 1738A(c)(A) and 1738A(f)(1), 72 ALR5th 249 (1999).

**TEXTS &  
TREATISES:**

- 
- 8 ARNOLD H. RUTKIN ET AL., [CONNECTICUT PRACTICE: FAMILY LAW AND PRACTICE WITH FORMS](#) (2010).
  - Chapter 40. Jurisdiction to enter and enforce custody orders
    - § 40.1. In general
    - § 40.2. Purpose
    - § 40.3. Scope; Definitions
    - § 40.4. Grounds for UCCJEA jurisdiction—Generally
    - § 40.5. Home state jurisdiction
    - § 40.6. Significant connections jurisdiction
    - § 40.7. More appropriate forum jurisdiction
    - § 40.8. Last resort jurisdiction
    - § 40.9. Temporary emergency jurisdiction
    - § 40.10. Modification—Continuing exclusive jurisdiction
    - § 40.11. Personal jurisdiction; Notice requirement
    - § 40.12. Prohibition on simultaneous proceedings
    - § 40.13. Jurisdiction declined due to inconvenient forum
    - § 40.14. —Criteria for determining inconvenient forum
    - § 40.15. —Effect of determination as to inconvenient forum
    - § 40.16. Jurisdiction declined due to unjustifiable conduct
    - § 40.17. Relevance of best interests standard to jurisdictional determinations
    - § 40.18. Pleading under UCCJEA
    - § 40.22. Hearings and testimony in Connecticut
    - § 40.23. Hearings in Connecticut relating to out of state proceedings
    - § 40.24. Hearings and testimony in another state relating to Connecticut action
    - § 40.27. International application
    - § 40.28. Enforcement jurisdiction under the UCCJEA, generally
    - § 40.29. —Registration of out of state custody determination
    - § 40.34. —Special evidentiary rules for enforcement proceedings
    - § 40.35. —Fees and expenses in enforcement proceedings
    - § 40.36. —Appeals from enforcement proceedings
- 1 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW AND PRACTICE](#) (2007).
  - Chapter 3. Impact of the uniform child custody Jurisdiction and Enforcement Act (UCCJEA): An overview
  - Chapter 4. Interstate child custody jurisdiction under UCCJA, UCCJEA and PKPA
  - Chapter 5. Recognition and enforcement of foreign judgments
- 3 ARNOLD H. RUTKIN, [FAMILY LAW AND PRACTICE](#) (2010).
  - Chapter 32. Custody and visitation
    - § 32.01. Preliminary considerations
    - § 32.02. Jurisdiction
      - [4] Uniform Child Jurisdiction and Enforcement Act

**LAW REVIEWS:**

- Mitchell A. Jacobs and David L. Marcus, *The Uniform Child Custody Jurisdiction and Enforcement Act*, 18 GP SOLO, Oct.-Nov. 2001, at 48.

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\* Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian.

## Table 10: Uniform Child Custody Jurisdiction and Enforcement Act

Conn. Gen. Stat. (2011)

<a href="#">§46b-115a</a>	<b>Definitions:</b> (3) “Child custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.
<a href="#">§46b-115c</a>	<b>Application to indian tribes</b>
<a href="#">§46b-115g</a>	<b>Notice to persons outside state; submission to jurisdiction</b>
<a href="#">§46b-115i</a>	<b>Taking testimony in another state</b>
<a href="#">§46b-115j</a>	<b>Cooperation between courts; preservation of records</b>
<a href="#">§46b-115k</a>	<b>Initial child custody jurisdiction</b>
<a href="#">§46b-115l</a>	<b>Jurisdiction</b> ( <i>Exclusive, continuing jurisdiction</i> )
<a href="#">§46b-115m</a>	<b>Modification of out of state child custody determination:</b> (a) Except as otherwise provided in section 46b-115n, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under subdivisions (1) to (4), inclusive, of subsection (a) of section 46b-115k and one of the following occurs: (1) The court of the other state determines that it no longer has exclusive, continuing jurisdiction under a provision substantially similar to section 46b-115l; (2) a court of another state determines that a court of this state would be a more convenient forum under a provision substantially similar to section 46b-115q; or (3) a court of this state or another state determines that the child, the child’s parents and any person acting as a parent do not presently reside in the other state.  (b) Notwithstanding the provisions of this act, a court of this state may modify a child custody determination made by a court of another state if: (1) The child resides in this state with a parent; (2) the child has been, or is under a threat of being, abused or mistreated by a person who resides in the state which would have jurisdiction under the provisions of this act; and (3) the court of this state determines that it is in the child’s best interest to modify the child custody determination.
<a href="#">§46b-115n</a>	<b>Temporary emergency jurisdiction:</b> (a) A court of this state has temporary emergency jurisdiction if the child is present in this state and (1) the child has been abandoned, or (2) it is necessary in an emergency to protect the child because the child, a sibling or a parent has been, or is under a threat of being, abused or mistreated. As used in this subsection with respect to a child, “abused” shall have the same meaning as in section 46b-120 of the general statutes.



<a href="#"><u>§46b-115o</u></a>	<b>Notice and opportunity to be heard and the right to intervene:</b> (c) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this act are governed by section 46b-57 of the general statutes.
<a href="#"><u>§46b-115p</u></a>	<b>Simultaneous proceedings</b> <i>(The authority of a court in this state to assume jurisdiction when a custody action has been commenced in another state)</i>
<a href="#"><u>§46b-115q</u></a>	<b>Inconvenient forum</b>
<a href="#"><u>§46b-115r</u></a>	<b>Jurisdiction declined by reason of conduct; assessment of fees and costs</b> (a) Except as otherwise provided in section 46b-115n, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise jurisdiction unless:...
<a href="#"><u>§46b-115s</u></a>	<b>Information required by the court</b> <i>(Affidavit concerning custody)</i>
<a href="#"><u>§46b-115w</u></a>	<b>Registration of child custody determination</b> “ (a) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the Superior Court in this state: (1) A letter or other document requesting registration; (2) two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the petitioner the order has not been modified; and (3) except as otherwise provided in section 46b-115s, the name and address of the petitioner and any parent or person acting as parent who has been awarded custody or visitation in the child custody determination sought to be registered.  (b) On receipt of the documents required by subsection (a) of this section, the registering court shall cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form.  (c) Within five days after the registering court’s receipt of the documents required by subsection (a) of this section, the petitioner shall notify the persons named pursuant to subdivision (3) of subsection (a) of this section of the registration of the documents by certified mail, return receipt requested at their respective last-known addresses or by personal service, and provide them with an opportunity to contest the registration in accordance with this section. The notice required in this subsection shall state that: (1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state; (2) a hearing to contest the validity of the registered determination must be requested within twenty days after service of notice; and (3) failure to contest the registration will, upon proof of notice, result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.  (d) The respondent must request a hearing within twenty days after service of the notice. At that hearing, the court shall confirm the registered order unless the respondent establishes that: (1) The issuing court did not have jurisdiction under a provision substantially similar to section 46b-115k, 46b-115l or 46b-115m; (2) the child custody determination sought to be registered has been vacated, stayed or modified by a court having jurisdiction to do so pursuant to a statute substantially similar to sections 46b-115k to 46b-115m, inclusive; or (3) the respondent was entitled to notice of the proceedings before the court that issued the order for which registration is sought, but such notice was not given in a manner reasonably calculated to give actual notice.

	<p>(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law with respect to those who have received proper notice and all persons served must be notified of the confirmation by the petitioner.</p> <p>(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.”</p>
<a href="#">§46b-115x</a>	Enforcement of child custody determination
<a href="#">§46b-115y</a>	Temporary visitation orders
<a href="#">§46b-115aa</a>	Expedited enforcement of child custody determination
<a href="#">§46b-115dd</a>	Order to take physical custody of child
<a href="#">§§46b-115hh-46b-115jj</a>	<p>Foreign child custody</p> <p>§ 46b-115d “International application of chapter. For purposes of this chapter, any child custody order of a foreign country shall be treated in the manner provided in section 46b-115hh.”</p> <p>§ 46b-115hh “Definitions. ‘Foreign child custody determination’ means any judgment, decree or other order of a court or tribunal of competent jurisdiction of a foreign state providing for legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order.”</p> <p>§ 46b-115jj “Enforcement of foreign child custody order re return of child under Hague Convention. A court of this state shall enforce a foreign child custody determination or an order of a federal court or another state court for return of a child under The Hague Convention on the Civil Aspects of International Child Abduction made under factual circumstances in substantial conformity with the jurisdictional standards of this act, including reasonable notice and opportunity to be heard to all affected persons, as a child custody determination of another state under sections 46b-115u to 46b-115gg, inclusive, unless such determination was rendered under child custody law which violates fundamental principles of human rights or unless such determination is repugnant to the public policy of this state.”</p>